THE SOUTHWESTERN POLITICAL AND SOCIAL SCIENCE QUARTERLY

VOL. VI JUNE 1925 NO. 1

CONTENTS

PUBLISHED QUARTERLY BY
THE SOUTHWESTERN POLITICAL AND SOCIAL SCIENCE ASSOCIATION
AUSTIN, TEXAS

"Entered as second-class matter January [illegible], 1921, at the postoffice at Austin, Texas, under the Act of March 3, 1879."

The Southwestern Political and Social Science Association

PRESIDENT

W. B. BIZZELL, Norman, Oklahoma

FIRST VICE-PRESIDENT

GEORGE B. DEALEY, Dallas, Texas

SECOND VICE-PRESIDENT

F. F. BLACHLY, Norman, Oklahoma

THIRD VICE-PRESIDENT

D. Y. THOMAS, Fayetteville, Arkansas

SECRETARY-TREASURER

CHARLES A. TIMM, Austin, Texas

EXECUTIVE COUNCIL

PRESIDENT, W. B. BIZZELL, Norman, Oklahoma
EX-PRESIDENT, W. M. W. SPLAWN, Austin, Texas
EX-PRESIDENT A. P. WOOLDRIDGE, Austin, Texas
EX-PRESIDENT GEORGE VAUGHAN, Little Rock, Arkansas
EX-PRESIDENT C. B. AMES, Oklahoma City, Oklahoma
VICE-PRESIDENT GEORGE B. DEALEY, Dallas, Texas
VICE-PRESIDENT F. F. BLACHLY, Norman, Oklahoma
VICE-PRESIDENT D. Y. THOMAS, Fayetteville, Arkansas
EDITOR OF QUARTERLY, C. P. PATTERSON, Austin, Texas

SECRETARY-TREASURER, CHARLES A. TIMM, Austin, Texas

ELECTED MEMBERS { B. YOUNGBLOOD, College Station, Texas
W. H. HAUHART, Dallas, Texas

THE SOUTHWESTERN POLITICAL AND SOCIAL SCIENCE QUARTERLY is supplied to all members of the Southwestern Political and Social Science Association. The subscription price of the QUARTERLY is two dollars a year. Applications for membership, orders for the QUARTERLY and remittances should be addressed to Charles A Timm, Secretary-Treasurer of the Association, University Station, Austin, Texas.

Correspondence with reference to contributions to the QUARTERLY should be addressed to the Editor, University Station, Austin, Texas. Station, Austin, Texas.

THE
SOUTHWESTERN POLITICAL AND
SOCIAL SCIENCE QUARTERLY

Vol. VI JUNE, 1925 No. 1

The editors disclaim responsibility for views expressed by contributors to THE QUARTERLY

THE DEVELOPMENT OF THE FEDERAL LONG AND SHORT HAUL CLAUSE

MATTIE FRAZER
University of Texas

Interested in securing for the country the wonderful advantages offered by the railroads, the American public at first quite naturally concerned itself with matters of construction rather than with questions of regulation. Practically every effort of those early years was directed toward increasing railway facilities to meet the rapidly expanding transportation needs. Not content with a single road, communities with commercial aspirations went so far as to encourage the building of competitive lines, in order to secure the lower rates which competition between rival roads would bring. Subsidies for railway-building were soon carried to extremes, railroads were constructed far in advance of actual settlement, and land-seekers who had been attracted to the western frontiers became, for the most part, wholly dependent upon the roads for their very existence. Confronted with such unusual opportunities and temptations for favoritism and discrimination, the railroads unfortunately yielded. Various abuses rapidly sprang up, chief among them being rate discriminations against the smaller non-competitive points in favor of communities reached by rival carriers. The inevitable result of such a condition was, of course, a shift in emphasis in American railway legislation from a demand for construction to a demand for regulation. "The industry of transportation is fundamental in the industrial organization of a

community. He who controls the means of communication has it in his power to arbitrarily make or destroy the business of any place or any person; and it was because the public recognized this great power, which from its nature is dangerous when employed with a view to the private interest of corporations, that appeal was made to government for protection."[1]

Although measures, in one form or another, to prevent charging more for a shorter than for a longer haul over the same line in the same direction, had been passed by a number of states, particularly Arkansas, Missouri, California, Pennsylvania, and Massachusetts, similar legislation by Congress was first enacted in 1887 in the passage of the Interstate Commerce Act. Section 4 of this Act, known as the long and short haul clause—which clause in somewhat different form had first appeared in Congress in a bill to incorporate the Washington City & Atlantic Coast Railway Company, passed by the House in 1877, and the Reagin bill to regulate interstate commerce and to prohibit unjust discriminations by common carriers (the long and short haul clause of which seemed to be its chief objection), passed by the House in 1878—provided

> That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, to be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and

---

[1]Henry C. Adams in his "Introduction" to *State Railroad Control* by F. H. Dixon.

the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of the Act.

But what is a "line"? And what are "substantially similar circumstances and conditions"? These were questions which arose to perplex even the members of Congress before the passage of the bill. To some, the language of the clause meant one thing; to others, the phraseology means exactly the opposite thing. It is interesting to note that, when an effort was made to get an expression of opinion on the second point from the Senate conferees, "these gentlemen stated that the interpretation of the measure was a matter for the courts to decide, and that each member in voting was to consider what he thought the court's interpretation would be."[2] With such a haze of confusion and doubt surrounding the legislative intent in the enactment of the clause, it is not surprising that the courts were promptly called upon to give their interpretation.

The answer to the first question was definitely given by the Supreme Court in 1896 in the case of the *Cincinnati, New Orleans & Texas Pacific Railway Company* v.*Interstate Commerce Commission,* 162 U. S., 184, commonly known as the Social Circle case. In this case, brought to enforce the orders of the Commission, it was developed that the Cincinnati, New Orleans & Texas Pacific Railway Company, the Western & Atlantic Railroad Company, and the Georgia Railroad Company were charging a rate of $1.07 a hundred for the transportation of vehicles from Cincinnati, Ohio, to Atlanta, Ga., a distance of approximately 474 miles, and from Cincinnati to Augusta, Ga., a distance of 645 miles, but at the same time were charging a rate of $1.37 a hundred for the shipment of vehicles from Cincinnati to Social Circle, Ga., a way station on the Georgia Railroad 52 miles east of Atlanta and 119 miles west of Augusta. The Cincinnati, New Orleans & Texas Pacific Railway extended from Cincinnati to Chattanooga,

[2]Haney, L. H., *A Congressional History of Railways,* Vol. II, p. 307.

Tenn.; the Western & Atlantic, from Chattanooga to Atlanta; and the Georgia, from Atlanta to Augusta. The Commission, after hearing, had ordered the defendants to "desist from charging or receiving any greater compensation in the aggregate for the transportation in less than carload lots of buggies, carriages, and other articles classified by them as freight of the first class, for the shorter distance over the line formed by their several railroads from Cincinnati . . . to Social Circle . . . than they charge or receive for the transportation of said articles in less than carload lots for the longer distance over the same line from Cincinnati . . . to Augusta." Refusing to comply with this order of the Commission, the carrier maintained that, inasmuch as the Georgia Railroad was a line lying wholly within a single state and charging and receiving the regular local rate on shipments to Social Circle, the provisions for the Interstate Commerce Act forbidding a greater charge for a shorter than for a longer haul over the same line in the same direction did not apply. The Court held, however, that, when a railroad "enters into the carriage of foreign freight, by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by consolidation with the foreign companies, but made by arrangements for the continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal Act, in respect to such interstate commerce."

The answer to the second question the Supreme Court gave in 1897 in the case of the *Interstate Commerce Commission* v. *Alabama Midland Railway Company et al.*, 168 U. S., 144. In this case, also brought to enforce the orders of the Commission, the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections were charged with exacting higher rates on certain commodities and classes of traffic for the shorter distance to and from Trop, Ala., than for longer distances over the same lines in the same direction under substantially similar

circumstances and conditions. In keeping with the decision laid down in 1892 in the case of the *Georgia Railroad Commission* v. *Clyde Steamship Company* (5 I. C. C. Rep., 324) that permission from the Commission must first be obtained before departure from the rule of the Fourth Section, and that competition of water carriers, competition of foreign railroads, and competition of railroad lines lying wholly within a single state—agencies not subject to government regulation—were the only circumstances which might create that dissimilarity of conditions which would justify a greater charge for the shorter than for the longer haul, the Commission contended that the competition of rival lines, all subject to the Interstate Commerce Act, could not be considered by the Commission or by the courts in determining whether property transported over the same line is carried under substantially similar circumstances and conditions. It must not be supposed, however, that the Commission always adhered to this view. When the Interstate Commerce Act became effective, in 1887, there were thousands of Fourth Section violations in all parts of the country and numerous applications for Fourth Section relief. In disposing of these applications, the Commission laid down the following rule in the Louisville & Nashville case (1 I. C. . Rep., 31): (1) That, where circumstances and conditions are dissimilar, the long and short haul clause does not apply, and that carriers must determine for themselves in the first instance whether such dissimilarity exists; (2) that only water competition and competition of rail carriers not subject to the Interstate Commerce Act can create that dissimilarity of circumstances and conditions contemplated by the Fourth Section, and that, while there may be exceptions, market competition and competition of carriers not subject to the Act, as a rule, justify a lower rate at a more distant point. As such an interpretation of the Fourth Section left it with little or no real force, the Commission was soon faced with the necessity of reviewing its decision, the result of the reëxamination being the rule

adopted in the Clyde Steamship Company case. In passing upon this newer interpretation, the Supreme Court said:

> That competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to Regulate Commerce, has been held by many of the circuit courts. . . .
>
> In construing statutory provisions, forbidding railway companies from giving any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatever, the English courts have held, after full consideration, that competition between rival lines is a fact to be considered, and that a preference or advantage thence arising is not necessarily undue or unreasonable.
>
> But the question whether competition as affecting rates is an element for the Commission and the courts to consider in applying the provisions of the Act to Regulate Commerce is not an open question in this court.

After thus concluding "that competition between rival roads is one of the matters which may lawfully be considered in making rates," the Court went on to say:

> It is further contended . . . that the courts below erred in holding, in effect, that competition of carrier with carrier, both subject to the Act to Regulate Commerce, will justify a departure from the rule of the Fourth Section of the Act without authority from the Interstate Commerce Commission, under the proviso to that section.
>
> In view of the conclusion hereinbefore reached, the proposition comes to this, that, when circumstances and conditions are substantially dissimilar, the railway companies can only avail themselves of such a situation by an application to the Commission.
>
> . . . . . .
>
> The claim now made for the Commission is that the only body which has the power to relieve railroad companies from the operation of the long and short haul clause on account of the existence of competition, or any other similar element which would make its application unfair, is the Commission itself, which is bound to consider the question, upon application by the railroad company, but whose decision is discretionary and unreviewable.
>
> The first observation that occurs on this proposition is that there appears to be no allegation in the bill or petition raising

such an issue. The gravamen of the complaint is that the defendmission of anyone. The charging or receiving the greater compensation for services rendered in transportation of property than is prescribed in the order of the Commission. It was not claimed that the defendants were precluded from showing in the courts that the difference of rates complained of was justified by dissimilarity of circumstances and conditions by reason of not having applied to the Commission to be relieved from the operation of the Fourth Section.

Moreover, this view of the scope of the proviso to the Fourth Section does not appear to have ever been acted upon or enforced by the Commission. On the contrary, in the case of *re Louisville & Nashville Railroad Company* v. *Interstate Commerce Commission*, through Judge Cooley, said, in speaking of the words "under substantially similar circumstances and conditions," and of the meaning of the proviso: "That which the Act does not declare unlawful must remain lawful if it was so before; and that which it fails to forbid, the carrier is left at liberty to do without permission of anyone. The charging or receiving the greater compensation for the shorter than for the longer haul is soon to be forbidden only when both are under substantially similar circumstances and conditions; and, therefore, if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, since if the circumstances and conditions of the two hauls are dissimilar the statute is not violated. . . . Beyond question the carrier must judge for itself what are the 'substantially similar circumstances and conditions' which preclude the special rate, rebate, or drawback, which is made unlawful by the Fourth Section, since no tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law. The carrier judges on peril of the consequences; but the special rate, rebate, or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this it must also, when using the same words in the Fourth Section, have intended that the carrier whose privilege was in the same way limited by them should in the same way act upon its judgment of the limiting circumstances and conditions."

The view thus expressed has been adopted in several of the circuit courts . . . and we do not think the courts below erred in following it in the preseent case. We are unable to suppose that Congress intended, by the Fourth Section and the proviso thereto, to forbid the common carrieers, in cases where the circumstances and conditions are substantially dissimilar, from

making different rates until and unless the Commission shall authorize them so to do, much less do we think that it was the intention of Congress that the decision of the Commission, if applied to, could not be reviewed by the courts. The provisions of Section 16 . . . extend as weli to an inquiry or proceeding under the Fourth Section as to those arising under the other sections of the Act.

The effect of such a decision upon the powers of the Interstate Commerce Commission it is not difficult to see. The Fourth Section became for all practical purposes a nullity. The result is best expressed in the words of Justice Harlan, who filed the following dissenting opinion:

I dissent from the opinion and judgment in this case. Taken in connection with other decisions defining powers of the Interstate Commerce Commission, the present decision, it seems to me, goes far to make the Commission a useless body for all practical purposes, and to defeat many of the important objects designed to be accomplisheed by the various enactmeents of Congress relating to intersatte commerce. The Commission was established to protect the public against the improper practices of transportation companies engaged in commerce among the several states. It has been left, it is true, with power to make reports, and to issue protests. But it has been shorn, by judicial interpretation, of authority to do anything of an effective character. It is denied many of the powers which, in my judgment, were intended to be conferred upon it. Besides, the Acts of Congress are now so construed as to place communities on the lines of interstate commerce at the mercy of competing railroad companies engaged in such commerce. The judgment in this case, if I do not misapprehend its scope and effect, proceeds upon the ground that railroad companies, when competitors for interstate business at certain points, may, in order to secure traffic for and at those points, establish rates that will enable them to accomplish that result, although such rates may discriminate against intermediate points. Under such an interpretation of the statutes in question, they may well be regarded as recognizing the authority of competing railroad companies engaged in interstate commerce—when their interests will be subserved thereby—to build up favored centers of population at the expense of the business of the country at large. I cannot believe that Congress intended any such result, nor do I think that its enactments, properly interpreted, would lead to such a result.

As has been remarked by Professor Frank H. Dixon, "however vague this opinion may be when taken by itself, its reiteration in succeeding cases leaves no doubt as to the position of the Court. Competition that is controlling in traffic and rates produces in and of itself that dissimilarity of circumstances and conditions which the statute had in mind, and when this condition exists a carrier has a right of its own motion to take the situation into account in fixing the competitive rate. In other words, in the only instance in which a carrier would have any desire to violate the distance principle, when it was compelled to meet the competition of another carrier, the prohibition against place discrimination was automatically removed, because the Court decided that the conditions at competitive and non-competitive points were under these circumstances substantially dissimilar. Moreover, conditions being dissimilar, no advance permssion of the Commission was necessary to take advantage of such dissimilarity. No ruling could have been better calculated to knock the props from under the Commission's authority. Thereafter, the Commission could only make suggestions for adjustments to eliminate place discriminations of this character, and whether such suggestions were or were not adopted depended upon whether they appealed to the carriers as in their interest."[3]

Thus the situation remained for the next thirteen years, until the Rocky Mountain congressmen became aroused by the serious discriminations practiced by the railroads against their section of the country in fixing rates to the Pacific Coast. Not only were lower rates to Pacific Coast terminals made applicable from the Atlantic Seaboard, but they were made to apply from points even as far west as the Missouri River and Colorado, thus creating a blanket or common-point territory 2,000 miles wide. Such a scheme of rate-making the carriers justified upon the ground of water competition between the Atlantic and the Pacific coasts. Why the carriers were obliged to meet the water

---

[3]Dixon, F. H., *Railroads and Government*, p. 29.

rate on traffic from Atlantic to Pacific terminals it is not hard to see, but why they were under the necessity of maintaining the same transcontinental rate from Chicago as from New York it is at first rather difficult to understand. It must be remembered, however, that water competition may make itself felt not only directly but also indirectly through market competition. For instance, "assume that a building requiring the use of a large amount of structural steel is to be erected in San Francisco. That steel is manufactured both at the seaboard and in Chicago. That which is made at the seaboard can be taken by water from the point of origin to the point of destination, and the rate at which it can move is therefore determined by water competition. The cost of producing steel is the same at both points. In order, therefore, that the producers may stand an equal chance in competing for this business, it is necessary that the rate from both points should be the same, and the business cannot move from Chicago unless the rate from that point is as low as that from the seaboard. . . . This clearly shows how water competition, if it does not actually extend to the interior point, may and does dictate the rate from that point."[4]

Notwithstanding what has just been said, it is obvious that the Rocky Mountain territory was entitled to some relief; for such a rate structure, if left undisturbed, would eventually mean the concentration of jobbing on the Pacific Coast. But, with the Commission powerless to deal effectively with the situation, the territory's only hope lay in a revision of the Fourth Section itself, a result accomplished by Congress in 1910 by striking from the long and short haul clause the objectionable phrase, "under substantially similar circumstances and conditions." At the same time, two other important amendments were added. The first, designed to cure an omission in the original act, prohibited a through rate in excess of the sum of the intermediate

[4] *City of Spokane* v. *Northern Pacific Railway Company*, 21 I. C. C. Rep., 422.

rates. Obviously it is as much a violation of the long and short haul principle to charge more than the aggregate of the intermediate rates for the through haul, where the non-competitive point lies beyond the point of competition, as it is to charge less than the aggregate of the intermediate rates for the through haul where the conditions are reversed. The second amendment, aimed at the elimination of the destruction of water compettiion, provided that, whenever a carrier reduced its rates to meet the charges of a water route, it should not be allowed to increase these rates unless, after hearing, the Commission should find the proposed increases to rest upon changed conditions other than the mere elimination of such water competition. In other words, as Professor Dixon has said, "railroads were no longer to be permitted to drive steamboats off the rivers by offering unremunerative rates, and then recoup themselves at their leisure after the disappearance of their rivals."[5]

An interesting illustration of the destructive practices of railroads in connection with water competition is furnished by the case of the *Bowling Green Business Men's Protective Association* v. *Louisville & Nashville Railroad Company et al.* (24 I. C. C. Rep., 228), the issue being whether the freight rates in general to and from Bowling Green, Ky., had been established with proper regard to the rates to and from Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. A comparison of the rates showed in most cases a greater charge for the shorter distance to and from Bowling Green than for the longer distance to and from Clarksville, Nashville, and Louisville over the same line in the same direction, the shorter being included within the longer distance. The carriers justified the discrimination on the ground of water competition at Clarksville, Nashville, Louisville, and Evansville and the absence of it at Bowling Green. The Business Men's Association countered by charging that water competition no

[5]Dixon, F. H., *Railroads and Government*, p. 30.

longer existed at Bowling Green because the Louisville & Nashville, through the Evansville and Bowling Green Packet Company, the president of which was also division general freight agent of the Louisville & Nashville at Evansville, had destroyed it. The Packet Company operated two steamboats, which carried passengers and freight on a semi-weekly schedule between Bowling Green and Evansville. Neither the agent of the Packet Company nor the agent of the Railroad Company solicited shipments until the merchants and shippers of Bowling Green in 1901 purchased the "Sun" to run as an independent vessel. Although the "Sun" began operations under a lower schedule than that being charged by the Packet Company, the Packet Company and the Railroad Company both immediately reduced their rates, the Packet Company even going so far as to haul freight for nothing, with a free pass to the shipper to boot. The tempetation for immediate profit was, of course, too strong for the general public to resist. The Railroad Company and the Packet Company monopolized the business, and the "Sun" within less than a year was tied to the banks. Although the Railroad Company did not own the Packet, it guaranteed the latter against any loss it might suffer in the traffic fight. The upshot of the struggle was the complete destruction of water competition at Bowling Green, as independent lines no longer had the temerity to compete with the Evansville and Bowling Green Packet Company for traffic from Bowling Green to Evansville and from Evansville to Bowling Green.

To deal with situations such as here presented, Section 4 now provided

> That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier

within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter dstances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: Provided, further, That no rates or charges lawfully existing at the time of the passage of the amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

With the approval of the amended clause on June 18, 1910, carriers and others at once began to ask themselves just what result, in the light of previous decisions, Congress had effected by removing from the statute the phrase "under substantially similar circumstances and conditions" and leaving the first proviso practically unchanged. The carriers earnestly contended that the only change was to take from the railways the power of initiative, the duty of the Commission being to determine whether competition existed at the more distant point. If it did, permission to depart from the rule of the Fourth Section must of necessity be granted; if it did not, such permission must perforce be denied. To this view, the Commission did not subscribe, holding that it was the intention of Congress not only to require carriers to become the advancing party in justifying Fourth Section deviations, but also to arm the Commission with power to deal effectively with cases when presented. If the sole function of the Commission was merely to inquire

whethere competition existed at the more distant point, obviously the matter stood for all practical purposes exactly where it stood prior to the amendment of 1910. The issue was decided in 1913 by the Supreme Court (which now contained but a single member of the Court of 1897) in the Intermountain Rate Cases, 234 U. S., 476. Following the form prescribed by the Commission after the passage of the 1910 amendments, seventeen railroads applid for Fourth Section relief in connection with tariffs covering practically the entire country from the Atlantic Seaboard to the Pacific Coast and to the Gulf of Mexico. Their application was "based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of competition of various water carriers and of carriers partly by water and partly by rail operating from Pacific Coast ports to Atlantic Seaboard ports; competition of various water carriers operating to foreign countries from Pacific Coast ports; and competition of the products of foreign countries with the products of the Pacific Coast; competition of the products of Pacific Coast territory with the products of other sections of the country; competition of Canadian rail carriers not subject to the Interstate Commerce Act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter and more direct routes, but applied also via the longer or more circuitous routes." Although the Commission refused to grant the request of the railroads as presented, it did permit the charge of a lower rate for the longer haul to the Pacific Coast than for the shorter haul to intermediate points, provided an appropriate ratio was maintained between the lower and the higher charge, and adopted, with some changes, a zoning system which had been set up by the carriers in connection with the establishment of their proposed rates. Such disposition of the matter proving unsatisfactory to the carriers, proceedings were begun by them to enjoin the Fourth Section as amended, on the ground of its

repugnance to the Constitution of the United States and of a proper construction of the clause in question. In discussing the effect of the change in the original Fourth Section, the Supreme Court said:

> With the light offered by the statements just made, we come to consider the amendment. It is certain that the fundamental change which it makes is the omission of the "substantially similar circumstances and conditions" clause, thereby leaving the long and short haul clause in a sense unqualified except in so far as the section gives the right to the carrier to apply to the Commission for authority "to charge less for longer than for shorter distances for the transportation of persons or property," and gives the Commission authority from time to time "to prescribe the extent to which such designated common carrier may be relieved from the operation of the section." From the failure to insert any word in the amendment tending to exclude the operation of competition as adequate under proper circumstances to justify the awarding of relief from the long and short haul clause, and there being nothing which minimizes or changes the application of the preference and discrimination clauses of the Second and Third sections, it follows that in substance the amendment intrinsically states no new rule or principle, but simply shifts the powers conferred by the section as it originally stood; that is, it takes from the carriers the deposit of public power previously lodged in them and vests it in the Commission as a primary instead of a reviewing function. In other words, the elements of judgment, or, so to speak, the system of law by which judgment is to be controlled, remains unchanged, but a different tribunal is created for the enforcement of the existing law. This being true, as we think it plainly is, the situation under the amendment is this: Power in the carrier primarily to meet competitive conditions in any point of view by charging a lesser rate for a longer than for a shorter haul has ceased to exist, because to do so, in the absence of some authority, would not only be inimical to the provision of the discrimination clauses of the Second and Third sections. But, while the public power, so to speak, previously lodged in the carrier, is thus withdrawn and reposed in the Commission, the right of carriers to seek and obtain under authorized circumstances the sanction of the Commission to charge a lower rate for a longer than for a shorter haul because of competition or for other adequate reasons is expressly preserved, and, if not, is, in any event, by necessary implication, granted. And as a correlative the authority of the Commission to grant on request the right sought is made by the statute to depend upon the facts estab-

lished and the judgment of that body, in the exercise of a sound legal discretion, as to whether the request should be granted compatibly with a due consideration of the private and public interests concerned, and in view of the preference and discrimination clauses of the Second and Third sections.

. . . . . .

The main insistence is that there was no power after recognizing the existence of competition and the right to charge a lesser rate to the competitive point than to intermediate points to do more than fix a reasonable rate to the intermediate points; that is to say, that under the power transferred to it by the section amended, the Commission was limited to ascertaining the existence of competition, and to authorizing the carrier to meet it, without any authority to do more than exercise its general powers concerning the reasonableness of rates at all points. But this proposition is directly in conflict with the statute as we have construed it, and with the plain purpose and intent manifested by its enactment. To uphold the proposition it would be necessary to say that the powers which were essential to the vivification and bneficial realization of the authority transferred had evaporated in the process of transfer, and hence that the power perished as the result of the act by hich it was conferred. As the prime object of the transfer was to vest the Commission, within the scope of the discretion imposed, and subject, in the nature of things, to the limitations arising from the character of the duty exacted and flowing from the other provisions of the Act, with authority to consider competitive conditions and their relation to persons and places, necessarily there went with the power the right to do that by which alone it could be exerted, and therefore a consideration of the one and the other, and the establishment of the basis by percentages, was within the power granted.

"Section 4," to quote Professor Dixon again, "now gave the Commission arbitrary and sweeping powers. But that body realized that such was not the legislative intent and that any attempt to act beyond what was its reasonable authority would be quickly blocked. That its interpretation of its powers was uniformly upheld by the highest court in spite of strenuous corporate opposition, and temporary obstruction by the Commerce Court, was due to the sanity and sound reasonableness with which it interpreted its powers. It proceeded forthwith, as soon as the amended section was operative, to lay down rules of procedure within which its

action was to be circumscribed. . . . Applications for relief poured in by the thousands and from action upon these there evolved a code which later in 1920 was crystallized into statutory form."[6]

It at once became interesting to note the limits set to Fourth Section relief by amendments of the Transportation Act of 1920. In brief they are these: (1) In the exercise of its authority, the Commission is not to permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed. (2) If Fourth Section relief is granted to a line because of its circuity, higher rates shall not be charged to or from intermediate points on the circuitous line to which the haul is no longer than that over the direct line between the competitive points. (3) Fourth Section relief shall not be granted merely because of potential water competition. In its latest form, therefore, the long and short haul clause provides

> That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act, but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section; but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and if a circuitous

[6]Dixon, F. H., *Railroads and Government*, p. 31.

rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; and no such authorization shall be granted on account of merely potential water competition not actually in existence: And provided further, That rates, fares, or charges existing at the time of the passage of this amendatory Act by virtue of orders of the Commission or as to which application has therefore been filed with the Commission and not yet acted upon, shall not be required to be changed by reason of the provisions of this section until the further order of or a determination by the Commission.

Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight or from competitive points shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

It will be interesting to watch what further changes the future will bring.

THE PROFESSION OF PUBLIC SERVICE

CALEB PERRY PATTERSON
University of Texas

Those interested in governmental research had the satisfaction during the last presidential campaign of having the fundamental plank in their own platform translated into a national slogan and permanently incorporated, I believe, into our practical political thinking. I refer to the pharase: "more business in government." As a consequence, the purpose lying back of this phrase probably inspired more telling arguments heard during the last session on the floors of Congress and in the committee rooms of the Senate and House than any other reform plank. But in spite of that, achievements in the direction of this avowed purpose of the administration are meager as compared with the need and the possibilities. I am of the opinion that this will be the case until there is less spasmodic and more sustained interest in governmental matters on the part of the rank and file of our citizens and especially of the men and women who make up our business fraternity. Going even further, I feel safe in predicting that improvement in governmental procedure will keep equal pace with the fluctuating interest of business men and business organizations in matters of government. I consider, therefore, that the increasing thought devoted by business organizations to matters of government is one of the most hopeful signs of the times.

It is the more important that business organizations should make their influence count because government must pass through something of the same transformation that has been experienceed by business itself in the past ten or fifteen years. I refer to the gradual elimination of rule of thumb, drift, and chance; in a word of those hit or miss policies which the economist baptized long since with the term *laissez-faire.*

To indicate what I mean, let me call to mind the recent rapid growth of trade and industrial associations, of og-

ganizations consisting of special functional groups such as the credit man, advertising and accounting experts, industrial physicians, employment managers, and others who have their national associations. If you run through their programs and periodicals, you will see that all are engaged in exchanging information, in working out standards and fundamental principals, and some more recently in formulating a code of ethics.

To digress for a moment, a few days ago my eye was caught by a report of the "canons of professional ethics of the American Trade Association Executives" which characterizes the executive "as a member of a recognized professions and as the responsible agent in a great movement" and recommends that "he should govern his action in accordance with the following principles . . ." which were then set forth. This is not unique. It is the symbol of a changing order in the business world.

Where one used to find secretiveness, satisfaction with the establisheed practices of one's own firm and ignorance of the rest of the world, you find today the spirit of analysis, criticism, comparison, and experimentation—in short the scientific spirit has made a place for itself in business and industrial organizations. This is further evidenced by the scientific and research divisions found in indivdual concerns.

Not long ago, Mr. Dennson, the president of the Dennison Manufacturing Company, told me that in a force of 3,500, they now have 250 who are devoting themselves exclusively to research-perfecting processes, studying the market, working out a production program for a number of years, and thus anticipating the next industrial depression whenever that may come.

You may know of the great research laoratories of the General Electric Company at Schenectady. It is reported that they are spending $3,000,000 per year on pure and applied research. The Western Electric has devoted a whole building to the housing of 3,000 workers, one-third of whom are full-fledged scientists. This organization has but one problem: the perfection of the telephone.

Practically all well-organized firms have their own body of specialized engineers or chemists or physicists, or employ professional statisticians, or have on their staff of advisors economists and even psychologists.

Finally, to top off this movement, we have great schools of business administrtaion which are engaged in bringing together and organizing the knowledge about business methods and practices in such a way that the science of business administration is taking form before our eyes. As in other fields, the "hastened living" made possible in the educational institutions will enable the sons to stand on the shoulders of the fathers—which is the essence of progress.

The scientific method of approach is wiping *laissez-faire* with its waste and costliness off the slate. It is at the very basis of the profession of business. Its mark is on the business leaders of our time, and through it they are becoming professional business men.

A similar transformation is taking place in the business of government. It, too, must free itseelf from policies that bear the stamp of drift, tradition, lack of information, lack of outlook, and lack of imagination. It must apply the scientific method to its procedure and its problems. It must develop professional standards and attract men and women who are eager to devote their lives to the profession of public administration.

It is true we have twenty to twenty-five bureaus of municipal research that have been performing valliant pioneer service in this direction, each in its own locality. Through them, substantial progress has been made in the past fifteen years in the theory and practice of sound organization, budget making, public finance, and engineering, and in other important branches of administration. If these standards and principles being developed and applied by the various bureaus were properly correlated and organized, they would form the nucleus of the science of public administration. But the lack of funds for publication and for an adequate staff have greatly hampered those interested from observing and reporting satisfactorily on their own work, to say

nothing of the many experiments in government now carried on in this country. This is the basic material necessary to the development of the science of government.

Apart from the largely localized activities of bureaus of municipal research, however, public administration offers little promise of such a development as is going forward in the business world. The chief reason for the dubious outlook is, in my opinion, that politics and the routine of public administration are in this country so closely allied in the public mind. As is known all too well, with the shifting of the political scenery a new cast of characters appears on the stage. We may not assume that any and every upright citizen is competent to administer the affairs of city or state, but we do seem to assume that *politically* qualified citizens will make competent administrators. At least this appears to be the case in view of the thorough-going housecleaning that takes place when the outs go in.

At any rate, I venture the assertion that we are not likely greatly to improve our methods and develop professional standards along the lines now followed in progressive business circles until we have a relatively permanent body of qualified public officials. I am referring not to the chief executive and the small group of policy-determining officials who should of course be directly responsible and responsive to the electorate. But I do refer to such officials as the police and fire departments, to the head of the tax and accounting divisions, and the chief officials in the public health and engineering departments.

More business in government becomes to me, therefore, not primarily a matter of legislation, nor larger appropriations, nor reorganization, nor budgeting income and outgo; it is rather a matter of administrative brains. I submit that we shall not have high-grade, efficient, and economical administration of public affairs until we have a body of high-grade administrators.

To build up such a body depends upon three conditions: (1) Proper training and experience in the special field of public administration as a prerequisite for appointment to

administrative positions; (2) permanency of tenure on the same basis as is customary in private enterprise; (3) the recruitment of promising juniors into the lower positions.

I. Proper Trainiing and Experience

To expect broad training and experience in the special field concerned is a far cry from what we are generally accustomed to, except in a limited number of our municipalities, and even there only in a limited number of positions. But this is quite the order of the day in busineess organizations, and abroad in public administration as well.

An advertisement caught my eye only a few days ago that will illustrate this latter point: It appeared in a Canadian municipal journal and called for applications for the position of city engineer in the city of Sidney, New South Wales. In addition to the usual educational prerequisites, the qualifications included "a comprehensive knowledge of the duties of city surveyor including road construction and up-to-date methods of city cleansing, and experience in the control of a large outdoor staff of foremen and workmen." The salary is to be $7,000. Annual leave begins at four weeks per year and increases to three months after ten years' service. Conditions of retirement at 65 years are fully set forth. Since traveling expenses up to $1,400 are granted the successful candidate, it is to be assumed that this advertisement was circulated throughout the British Empire.

Such a case is by no means unique. English municipal journals regularly contain advertisements for candidates for the top positions in engineering and public health work. Announcements of appointments are also very instructive as they usually give the whole career of the appointee showing how he has moved from one city to another, thus constantly advancing to more responsible positions.

The recognition of municipal administration as a professional career is even more widely accepted in Germany. The man who made Frankfort the mecca of those interested

in municipal progress, Mayor Addickes, was mayor of Dortmund in the seventies. He then went to Altona to fill the same position, and from these to Frankfort, where he held the position of mayor with much honor for twenty years—from 1893 to 1913.

Our difficulty in this country is really two fold. In public affairs we confuse or perhaps better identify policy-determination and policy-administration. Secondly, we seem to have an abiding faith in the "universal competency" of all good citizens to fill a public office, and incidentally in their willingness to do so at an inadequate wage.

Let us consider the responsibilities of the city engineer. According to figures supplied by the Bureau of Municipal Research of Rochester, N.Y., the value of the public property in this city, including pavements, sidewalks, water works, sewerage, equipment, buildings, ets., exceeds $85,000,000. Its upkeep and operation will cost this city about 12 per cent of the total budget of $14,000,000 per year. It is with such a weight of responsiility that the city engineer is usually entrusted in our larger cities. It is not at all uncommon that this office is filled by men who have previously had no experience in the problems of municipal engineering. Any city has every reason to pursue the same method as that adopted by the manufacturer building a new power plant. He selects a hydraulic or an electrical engineer—not a road or an automotive civil engineer. So the city should in all reason select a technical man of recognized standing who has had the varied experience required to handle municipal engineering problems in an effective way.

Let us also consider the position of city manager from this standpoint. This is of particular interest to the business man because the city manager movement is, in my opinion, largely due to the business man's revolt against the present-day wasteful and costly policies pursued in city government more than to any other one cause. Still I could name a list of cities which, after having adopted a city manager form of government in the name of business-like administration, appointed men as managers who were

known as good business men or good city engineers even, but who knew little about running a city. One of the largest city-manager cities with an annual budget of $3,000,000 gave this all-important office to a successful real estate man who clearly stated at the very outset that he knew nothing about managing a city. He proved it conclusively within six months. Many a city has experimented with city engineers in these responsible positions, but, as the number of separations in the records of appointments shows, with ill success. The good city engineer knows his own department, but is usually lacking, for instance, in acquaintance with the whole field of municipal finance and budget making, to say nothing of other branches of municipal administration that are quite outside the engineering field and do not really lend themselves to the engineering technique.

As with the city engineers and city managers, so with municipal accountants, health administrators, etc. My conclusion on this point is that there is an art and science of public administration that is distinct from both business and politics. It must be recognized as such; it must be developed, and its principles taught in permanent schools of public administration which are on a par with any of our high-grade technical institutions.

II. Permanency of Tenure

If we once have a corps of administrative officials who qualify as masters of science of government whether in public health, public safety, or public finance, we must then assure them of permanency of tenure consistent with satisfactory performance of their duties. Without such assurance the public service will fail to attract men of the requisite caliber. This is my second point.

I am not referring to civil service protection but to the same sort of protection that is granted the business manager who, as the phrase goes, "delivers the goods." The character of his work is his chief protection. Let is be written into the contract as is suggested in the engineer's position

in Sidney: "the engagement will be subject to three months' written notice on either side." But let this be *bona fide* and entirely apart from reservations of a political nature on the part of the city employer.

A few years ago the president of the D. & H. Railroad was quoted to the effect that it cost his railroad at least $1,000,000 to train a new manager. It would be interesting to have an employment manager experienced in computing the cost of turn-over, estimate how much a turn-over in a state's or city's working force will cost each new administration. Such costs would naturally include not alone losses due to scrapping of the accumulated information, experience, and judgment of the present incumbents—that is irreplaceable—but also to what might be called the wastes of apprenticeship, such as errors, spoiled materials, a generally slackened pace of work. Since, as is notorious, government has no methods of training new employes, thus compelling them to pursue the slowest and most expensive method of learning, *i. e.*, learning by doing, the period of apprenticeship itself is unnecessarily long and costly. One does not need to draw on his imagination to appreciate that an estimate of the periodical public turn-over would run into a staggering amount.

While progressive business concerns have been known to recast their whole administrative policy in order to reduce to a minimum the leakages caused by labor turn-over, the government's business is so managed that it periodically consigns its managerial brains to the scrap heap almost as a matter of routine—as though executive ability grew on every bush.

In referring to the fact that certain of the more desirable positions in Albany, N.Y., are filled by holdover appointees, the correspondent of a New York paper suggested that they would probably have the grace to do "the sportsmanlike thing, and send in their resignations by the first of the year." This seatement was made with neither comment nor protest since it was felt to be quite in accordance with the rules of the game.

This is just the crux of the matter. Government is not a business, it is a tremendous game. Higher officials may be depended upon to know the rules of the game. But the public does not prescribe that they should be administrators, schooled and experienced in their craft. Our practice in this respect goes back to primitive times when the whole business of government was, as some one has put it, to keep order, to see that the roads were shaped up twice a year, and to raise enough taxes to meet the expenses of the schools. It is to this pioneer period that our conception of public administration still harks back, whereas the actual scope of the functions performed by government has increased immeasurably and the technical requirements to perform these functions have become increasingly involved, and, what is more,, distressingly expensive.

It is high time that we scrap the theory of "universal competency." If this is once done, we can then train men in the specialized tasks of administration, select them on the basis of competency and retain them in office so long as they make good.

III. Recruitment of Juniors

My third suggestion has to do with the necessity of recruiting young people of promise and capacity into the subordinate positions. It comes last because until the first two conditions are met, there can be little hope of attracting any number of the abler young men and women into the public service. I do not need to dilate on the fact that an efficient and economical administration depends on the moral flow of promising juniors into the public service. But experience runs counter to this condition. Much evidence points to the fact that the government does not belong to the group of preferred employers.

Proof of this just came to my attention in connection with an investigation made by the Bureau of Government Research of New York City of conditions in county government in New York State. It appears that the civil service

commission gave 193 examinations in 1920–21, 1921–22 covering all sorts of positions at varying rates of pay from $600 to $3,500. The figures show than in eighty-six of these tests three or less candidates entered the lists, and in sixty-six, two or less, that is to say that in 44 per cent of the cases there was no real competition. Although New York counties are now spending over $33,000,000 per year of the tax money raised in the State and employ a force of 8,000 to 9,000 workers with a total payroll of $12,000,000, they stand in such ill-repute as employers that young peopie, even in the lean years such as we recently had, are unwilling to compete for nearly half of the vacant positions.

The New Emphasis on Politics and Government

The social justification for practical training in the field of politics and government rests on the axiom that the object of modern government is the public welfare, the common good. Society gains in both economy and service by paying for the training of its public servants rather than for their blunders. Private business has long recognized this principle of efficiency which must ultimately become the basis of the management of public affairs.

There are many indications of this growing attitude in favor of a professionalized public service in the United States. First of all, there is the increasing sphere of influence of the civil service commissions, national, state, and municipal. It is now a settled matter that in the field of public education, which is a government service, a professional career is the rule. The colleges and universities have recognized the need for trained public servants by giving courses in the various fields of government administration and economics, practice-teaching courses for teachers, statistical and laboratory courses in business administration, excursions for geological students, clinical and hospital training for physicians, courses in nursing, and training for social service. Harvard and Massachusetts Institute of Technology maintain a school for health officers, and the

University of Wisconsin grants the degree of Doctor of Public Health. The University of Chicago gives definite training for public service. There is also a growing tendency for college professors trained in economics, government, and business administration to enter government service.

SOME POLITICAL IDEAS OF THOMAS McINTYRE COOLEY

O. DOUGLAS WEEKS
University of Texas

One of the leaders in the period of constitutional adjustment which followed the Civil War in the United States was Thomas McIntyre Cooley, who for twenty years after 1865 was a distinguished member of the supreme bench of Michigan. Most noted for his judicial opinions and because of his authorship of *Constitutional Limitations*, a classical legal treatise on our constitutional system, he nevertheless published during and after his career on the bench a series of periodical articles containing some interesting reflections on the nature of our Government, which merit more attention than they have been given.[1] In these articles Judge Cooley shows a keen grasp of the new spirit of the Constitution and the necessity for its expansion to meet the needs of a rapidly changing economic and social life, which created a new nation after the war. And yet he was no innovator; indeed,

---

[1]Thomas M. Cooley (1824–1898) was born in New York State, and at an early age emigrated to Michigan, where he was later admitted to the bar. He first came into prominence in 1857 as the compiler of the laws of the State. This led to his appointment to the law faculty of the University of Michigan of which he remained a member from 1858 to 1884. He was most distinguished as an associate justice of the Supreme Court of Michigan from 1865 to 1885. During this period the court consisted of the so-called "Big Four"—Campbell, Christiancy, Graves, and Cooley. After his retirement from the bench Cooley served as a member of the first Interstate Commerce Commission, and in his last years was a lecturer in political science at the University of Michigan. All during his career he found time for writing; his general works being: *Constitutional Limitations*, *General Principles of Constitutional Law*, *The Law of Taxation*, *The Law of Torts*, and an edition of *Blackstone*. His periodical articles, which are in some cases reports of lectures and addresses, are cited in subsequent notes. For a biography of Justice Cooley, see J. W. Knowleton, "Thomas McIntyre Cooley," 5 *Mich. Law Review* 309. See also list of articles and addresses, *Mich. Law Journal*, Dec., 1896.

he was essentially a conservative, who advocated "making haste slowly." He believed, however, that whether for good or evil, change was inevitable, and that political institutions must be adjusted to the facts of an altering social order.

Like some of his foremost contemporaries, Cooley believed in the organic and evolutionary character of all constitutions, whether written or unwritten.[2] A written constitution, such as our own, cannot be permanent unless grounded in political experience antecedent to its formation. The chief evil of written constitutions is, he said, that too often they try to create something entirely new, which is impossible. The whole American constitutional system has been produced by a process of growth, which began before 1787; hence the Federal Constitution was but the "crowning of a structure made up of thirteen steady pillars." Indeed, its ratification at first accomplished little, for even though important powers were given to the Central Government, almost all the general powers of Government were left to the States, and, in essence, the States bade fair to remain the most important part of the system. The balance was, certainly, in their favor. Moreover, the framers of the Federal Constitution, perceiving an apparent balanced adjustment between the departments of government in the English system, were consciously establishing a system of checks and balances. But how long, Cooley asked, could this arrangement last both as between the Nation and the States, on the one hand, and as between departments of the National Government, on the other? Could the new supreme law remain a static affair? Such, he assured us, was contrary to nature, for "it is one thing, unfortunately, to put intricate machinery in motion, and another, and quite different thing, to make it, under unforeseen occurrences, work the intended results."[3]

---

[2]"Comparative Merits of Written and Prescriptive Constitutions," *Harvard Law Review*, March, 1889.

[3]James C. Knowleton, "Thomas McIntyre Cooley," *Michigan Law Review*, V. 309.

With respect to the balance of power between the States and the Nation, Cooley maintained that the Central Government had always been in the ascendency, which was true for several reasons. In the first place, the loose constructionists launched the new government, and during the twelve years of their power they got the process of centralization safely started, so that regardless of Jefferson and his party, who came afterwards, the process continued, because it was difficult to retract. Indeed the "ins" are always reluctant to turn back, even if it were possible; therefore, the pendulum under Jefferson could not swing backwards. Other causes, of course, contributed. One of these was the spoils system, coupled with national party organizations, in which the State remained a subordinate thing. Moreover, public opinion has steadfastly supported the central power, for if Congress doubts its capacity to pass a certain law, a preponderating opinion in favor of such, which has often been the case, will resolve the doubt. Thus by habits of political and party thinking the Federal Government was assumed to be superior to the State Governments. In addition, litigants sought the Federal courts, because of greater respect for them and because of the desire for finality. That finality should rest with them was due to the fact that the Federal courts had the last say, and whenever a case arose involving the extent of the Federal power, their sympathies were usually nationalistic, and the States were without a means of checking the expansion of national power. Centralization was also aided along in later years by certain non-political events. The railway and the telegraph, for instance, made Washington nearer the people of New Hampshire and Georgia than were their own State capitals at the time the Union was formed. As a result of this, powerful interests were already in 1878 demanding the superior protection of the Central Government; the railways to get a fairer deal, and the farmers to be protected from the railways. And, lastly, Cooley saw in the Civil War a factor which helped build up a new national consciousness, through the psychological effect of united

action, the victory of the Nation over a group of States, and the nationalistic policies of the recent Reconstruction.

As for the separation of powers and the check and balance system, Cooley believed them at best faulty. He recalled Adams' enumeration of some eight balances in the Federal Constitution to which Adams in his old age added the party caucus, which, though informal, he came to consider the greatest of all. Cooley's position was, however, that the system had not worked, and that the success of government did not depend upon such mechanical devices, but rather upon a proper sense of fair play and a willingness on the part of governmental officials to coöperate. He pointed out numerous examples where the equilibrium of the original design did not operate. One was the growth of the power of the Senate at the expense of the House of Representatives; another, the aggrandizement of Congress during the Reconstruction Period at the expense of the President. Moreover, there went on, he thought, a constant shifting of balance. What happens, he asked, to a President like Johnson if a determined and unscrupulous majority in Congress resolve to discredit him? Indeed, what happens ordinarily when President and Congress are of opposite parties? Besides, what help has a judiciary against a Congress hostile to its power, or a President who refuses to enforce its decisions? A court cannot make a popular appeal; its safety depends upon its record alone.

The "Federal Constitution," therefore, Cooley concluded, "though it is the same in words, is not, as a living instrument, the same today that it was when made. There has been change, and there will be change, whether we approve and assent to it or not." To substantiate this, he quoted Story, who said: "Men flatter themselves that now, at least, all is settled; but no, our laws are written in the sands of time, and the winds of popular opinion gradually efface them." And then, Cooley continued, "Indeed there never has been in the history of the world such a thing as a stationary constitution; and if it were possible to establish

an exception, circumstances . . . would preclude it in relation to our own."[4]

While, as was said above, Cooley recognized the changing spirit of our Constitution, particularly with reference to the tendency toward Federal centralization, it must be noted that he did not agree with Von Holst to the effect that every accretion of power to the Federal Government brought us nearer an ideal syetem. He accepted expansion as inevitable, but he believed there were definite limits to the process. Viewing our constitutional system as a whole, he was convinced, in the first place, that local autonomy was essential to American democracy. Self-government must remain to our States, counties, and municipalities, because it is characteristicaly Anglo-Saxon, and expresses an ideal from which we can never wholly depart. Here enters his doctrine of implied constitutional limitations, which he applied at first largely in the interest of municipal corporations. In State constitutions, then, there should be limitations implied in the interest of local government, because it existed before government in its largest sense was established. Particularly must the private powers and capacities of a municipality be regarded as entirely beyond legislative dictation. "Whoever insists," he said, "upon the right of the State to interfere and control by compulsory legislation the action of the local constituency in matters exclusively of local concern, should be prepared to defend a like interference in the action of private corporations and of natural persons."[5]

In support of State autonomy, Cooley attacked the tendency to exhalt national sovereignty to the extent of denying all sovereignty to the States. He distinctly upheld the original theory of divided sovereignty. The doctrine of indivisible sovereignty, he thought, makes a definition the master of the facts. Indivisible sovereignty exists nowhere

---

[4]"Changes in the Balance of Governmental Power," *International Review*, 1875.

[5]"City Park Cases," 28 *Michigan* 241.

except in savage tribes, governed by despotic chiefs, for sovereignty in civilized countries everywhere is limited and diffused. Governments in different countries are permitted to do different things; sovereignty has a variable content. But here he was clearly thinking of what Story defined as legal sovereignty, for he spoke of sovereignty as that authority which the people of a State commonly obey. He contended that the sovereignty of the whole people of the United States alone was never contemplated by the Constitution, and that the theory of undivided sovereignty was just as dangerous to the Constitution in the hands of present-day Nationalists as it had been in the hands of Calhoun, who used it to further states' rights.[6]

Furthermore, Cooley read into the Federal Constitution certain limitations respecting the exercise of national power. These take the form of principles, which underlie the Constitution, and which prevent its radical amendment or expansion. Amendments cannot be revolutionary; they must be harmonious with the body of the instrument. Nor should the Constitution be violated to save it.[7] Cooley did not share the conviction of some of his contemporaries that there was a higher constitution—a social constitution, the existence of which justified the violation of the spirit of the written document. As an illustration, he opposed the annexation of non-contiguous territory. Referring to the proposed annexation of Hawaii, he said that, "outlying colonies are not within the contemplation of the United States Constitution at all, and are altogether foreign to our system and ideals as well as the original intent. The treaty-making power cannot be made to do everything—if so our institutions are at stake."[8] The only kinds of territory we could annex, he said, were such that could ultimately become States. The treaty-making power, moreover, could not be

---

[6] "Sovereignty in the United States," *Michigan Law Journal*, April, 1892.

[7] "Power to Amend the Federal Constitution," *Michigan Law Journal*, April, 1893.

[8] "Grave Obstacles to Hawaiian Annexation," *Forum*, June, 1893.

used to flout the sovereign will or to undermine established institutions. And it was limited by practical difficulties, and could not be used squarely against the Constitution itself.

Cooley also was a supporter of carefully guarded individual rights, but he believed they originated not from nature, but from the Constitution and laws. "Many persons," he said, "are accustomed to speak of natural rights as the rights which belong to a man in a state of nature before he consents to any government and thereby makes himself a member of an organized society. By this is implied that there is a state of nature antedating political organization, and therefore, antedating law, in which every individual has rights given him by the law of nature, which every other individual is under obligation to respect and observe. Now of this it must be said . . . that the conception of such a state of nature is a mere fancy, that it never did and never can exist, for the individual is never found outside of society . . ."[9] There are, however, certain inalienable rights such as life, liberty, marriage, property, and contract, which are granted or implied under any free constitution. These rights must be protected, and can only be protected by government, but in view of the growing complexities of society, the protection of individual freedom will have to be accomplished in a positive, as well as in a negative manner. Governmental regulation was inevitable, he thought, although he deplored the advent of a paternalistic government, which he believed despotic and intolerable in America. Greater regulation, however, must come in the fields of health protection, railways, corporate profits, and public utilities,[10] and also there was need of the establishment of a means of arbitration in labor disputes.[11]

From this it may be inferred that Cooley viewed the law

---

[9]"Fundamentals of American Liberty," *Michigan Law Journal*, June, 1894.

[10]"State Regulation of Corporate Profits," in *North American Review*, September, 1883.

[11]"Arbitration in Labor Disputes," in *Forum*, June, 1886.

as a progressive science. Law must always be of human shaping, he thought, and must be capable of being molded and conformed to the actual conditions and aspirations of the people. Therefore, the law should constantly be changed and improved. But while a judge should not cling "with a fetish pertinacity to a worn-out and putrid principle of law," he should not, on the other hand, "endanger the symmetry of our common law by thrusting forward new and startling innovations . . . Like everything else, to grow soundly, the law must grow slowly, and changes should not come unless their necessity is perfectly clear." The laws of a nation are the best evidence of its progress, and give the best insight into the character of a people and the degree of their civilized development, prosperity, liberty, and happiness; but there cannot be real progress with too rapid change, and where the body of the law is subjected to too much violence at the hands of the Legislature. Mere expediency, in any event, must not have at its mercy the fundamental limitations, expressed or implied in our constitutions, for, only through these channels, can orderly progress be made.[12]

Here follows, logically, Cooley's views of the part American courts have to play in keeping the law symmetrical, for the doing of which the power of judicial review is the most important means at their disposal. Particularly is this true of the Federal courts, whose duty it is to preserve the constitutional system, and to reconcile liberty with order. For this reason, the Federal judicial power is the most characteristically national part of our political institutions. This power is not only coëxtensive with the Federal executive and legislative powers, but it goes beyond them, for there are many questions the Federal courts have to consider which do not affect the actions of the President or Congress. It is the Federal judiciary alone which can check usurpations of the States, and which can act as a referee between States and persons from different States.

[12] *American Law Review*, Vol. XXXII, p. 916.

But the power of judicial review has not made the courts supreme over the other branches of the Government, for the judiciary has been the most scrupulous of all three departments with respect to staying within its rightful bounds, and it has most carefully guarded the rights of States and citizens. However, he did not deny the growing tendency of the courts to exceed their powers by declaring unconstitutional, laws, which simply displease them. Courts have nothing to say, he contended, about the wisdom of legislative acts, and they should not declare acts unconstitutional unless they clearly violate a principle of the Constitution. To guard against the abuse he solemnly warned his colleagues on the bench that, "We must enter upon the examination of a constitutional question, assuming that the Legislature has been guilty of no usurpation. We are to remember also that we have no supervisory power in respect to legislation, that the law-making power is not responsible to the judiciary for the wisdom of its act, and that, however unwise and unpolitic their acts may appear, they must stand as law unless the Legislature has plainly overstepped its constitutional authority or lost jurisdiction in the attempt to exercise it, by failing to observe some express constitutional direction."[13] Moreover, he said that the case must be clear; a mere doubt of the court as to the validity of the enactment is no ground for annulling it.

In closing, therefore, it may be said that Cooley's position was one of measured progress in the expansion of the Constitution and the development of the law. The problem, as he saw it, was one of making the proper adjustment between the individual and society. In doing this we cannot shut our eyes to changed conditions. The power of government, the rights of society, will grow at the expense of the individual, but there must always be preserved to him a sphere of rights. There are decided limits to expansion, and these must be carefully guarded. The courts, in exercising their function of interpretation, must, therefore, con-

[13] "State Tax Cases," 54 *Michigan* 360.

sider carefully each move. They should not be guided by precedent alone, for our institutions are not static; they must keep abreast with a changing society, but withal, the essential features of our constitutional system must be retained, and the symmetry of the law must be preserved as the content is widened. Cooley was, therefore, not a legalist; he followed rather the middle of the road. He may best be characterized as a liberal-conservative, who advocated the retention of "sound" principles in law and government until it was clearly demonstrated that a change was necessary. To a generation, which was confronted with many new social and economic problems, and which was characterized both by the existence of arch-conservatives, on the one hand, who favored no advance, and by many varieties of extremists, on the other, who advocated ill-considered panaceas, Cooley's advice was good, and his reasonable spirit and truly judicial attitude are worthy of admiration even today, when the structure of the Central Government is tending to grow top heavy, when governmental functions, in general, are increasing, and when the "cult of the Constitution" seems to be growing. Cooley was a conservative, but he was a seeing conservative.

SOCIAL PSYCHOLOGY: A METHODOLOGICAL NOTE

R. CLYDE WHITE
Agricultural and Mechanical College of Texas

The contributions to social psychology have been frequent in the last half dozen years, Allport, Williams, Giddings, Ogburn, Wolfe, Bernard, and Kantor, to mention only a few, have approached the subject from varying points of view and have added immensely to our understanding of human relations. The very fact that hte literature is increasing so rapidly makes it all the more necessary to give attention to methodology now and then. Furthermore, the term, "psychology," is coming to be almost as vague as the phrase, "social science"; it may mean anything from the investigation of physiological reflexes to commerce with departed spirits. To hear a matter spoken of as psychological conveys nothing sufficiently definite for one to even guess at it unless he can secure information of a more specific kind. Social psychology is little better off than general psychology in this respect, except that it is a differentiation within the psychological field; that does give it the possibility of more precise definition.

It will not be amiss to indicate the subject-matter of two or three sciences with which psychology is closely connected. Roman anatomy deals with bodily structure. Neurology is concerned with the anatomy, physiology, and pathology of the nervous system. Psychology has to assume the findings of neurology. The functioning of neural structure, initiated by a memory or an external stimulus and resulting in an overt or emotional response, furnishes the data of psychology. The correlation of neural structure and psychic function seems to be very close. The organization and rearrangement of "teams of neurones" is neuro-physiological, and yet it may be affected by an external stimulus which is definitely psychological. Emotion generally accompanies an overt reaction; this "stirred-up state of the organism"[1]

[1]Woodworth, R. S., *Psychology*, p. 118.

modifies the direction and the precision of the overt response and so is an important source of psychological data. It is a factor in the establishment of neurone connections.[2] Although something is known of the minuter neural structures, yet most of the assumed knowledge is derived from inferences from responses to stimuli. Thus, we may distinguish the fields of neurology and psychology, but the study of one cannot get on well without the other. Now, we may ask, where does social psychology differentiate itself from the general field of psychology?

McDougall tried to differentiate it by assuming the existence of a long list of instincts with social aspects.[3] The persistence of the individual and of the species has some fairly uniform and universal prerequisites. A knowledge of the existence of these prerequisites—food, protection, procreation, etc.—enables us to assert that wherever human beings live they will have to be provided. This knowledge tells us nothing, however, about *how* they will be provided. Any other animal species will be found to have much the same conditions to existence. Furthermore, the iron-clad instincts which Professor McDougall postulated have not been verified by experiment and further observation.[4] Allport defines social psychology as follows: "Social behaviour comprises the stimulations and reactions arising between an individual and the *social* portion of his environment; that is, between the individual and his fellows. Examples of such behaviour would be the reactions to language, gestures, and other movements of our fellow men, in contrast with our reactions toward non-social objects, such as plants, minerals, tools, and inclement weather."[5] This is a much more atomistic conception than McDougall's. In order to learn man's social psychological reactions Allport would study the vast range of social stimuli and

---

[2]Wason, J. B., *Psychology*, p. 211 ff.
[3]McDougall, W., *Introduction to Social Psychology*.
[4]Watson, Kantor, Ogburn, etc.
[5]Allport, F. H., *Social Psychology*, p. 3.

the response to them. These constitute the data of social psychology.

There is still another conception of social psychology which must be put along beside these two. It is represented by some of the sociologists, by nearly all the ethnologists, and among the psychologists chiefly by Professor J. R. Kantor. Speaking of the phenomena of culture, Wissler said, " . . . the psychologists seek their origin in universal psychic activities, while the anthropologist is content to find the approximate localities and relative times whence the various elements come into view."[6] He is striking at the instinct theory and contends that at present, anyway, definitely organize instincts are inadequate for the explanation of culture and the behaviour of people in response to cultural stimuli. Lowie wrote a book to disprove the evolutionist theory of culture, but in this book he also proved the fact of differential psychic response for the satisfaction of the same organic and social needs.[7] Giddings, Cooley, Small, Summer, Barnes, Ogburn, etc., have emphasized cultural stimuli. "The problem of social psychology," says Kantor, "then, is to study the origin and operation of cultural responses to institutional stimuli. It is precisely through such study of the interaction of persons with institutions that we can arrive at a series of fundamental principles for a scientific social psychology."[8] Kantor scorns the idea of instinct as an "anamatism." He apparently excludes much of the data also which Allport considers essential in social psychology. He is probably the most radical exponent of this conception of social psychology.

The conflicting conceptions of this branch of psychology turn upon the sources of data. McDougall finds the chief source of the data of social psychology in the responding mechanism itself. Allport and Kantor look to the stimulating situation but disagree on the kind of stimulating situation to seek. Three possible sources of data exist: the

---

[6]Wissler, C., *Science*, Vol. XLIII, p. 195.
[7]*Primitive Society.*
[8]*American Journal of Sociology*, Vol. XXIX, p. 678.

responding mechanism, the stimulus, and the response. Experience seems to rule the first one out of practical consideration. But the stimulus and the response can be observed with greater precision. That should be determining in seeking a methodology. To talk about social insticts seems to involve fruitless speculation, but to determine the field of social psychology through a classification of stimuli seems more promising.

This necessitates a discussion of the theories of Allport and Kantor. Clearly the source of data which Allport chooses is social. He is concerned with the response of persons to each other. Giddings has emphasized interstimulation and response for a number of years. Can we add Kantor's data to this and still call the science which deals with them social psychology? All culture is socially produced and maintained; new additions rest on the preëxisting base. Culture is a system of stimuli approved by the group—whether it be material culture or immaterial culture—this, of course, is only the psychological conception of culture and neither excludes nor limits other conceptions—and tends to mould the habit systems of individuals born into the group. The result is fairly uniform responses of members of the group, when they are in the presence of the same stimuli. An illustration will make this clear: the Roman Catholic Mass had a social origin, but it is at the present time a long-established culture complex. Children of Roman Catholic families come to respond to it just like their elders. It is a stimulus which produces a similar response, provided the individual has been exposed to the whole cultural situation long enough to have his habit system built up (a rearrangement of neuronic structure probably accompanies this change). But the sort of inter-human data which Allport brings forth is also significant. Human beings are specialized stimuli for each other: they "imitate" the actions and moods of each other; they are reticent in the presence of enemies; friends like to respond similarly to like stimuli (in fact such responding is the genesis of friendship); they stimulate each other in circular fashion. Conversation is

an example of this alternate stimulation and response, where there is progress and not repetition. If both classifications of stimuli are not included in the data of social psychology, we shall have to create a social psychology and a cultural psychology. But culture is produced in the human group, and the ideas which people have about culture affect the inter-human stimuli and responses. They cannot with profit be separated, although it might be wise to distinguish between them in specific cases for methodological purposes only. Revising Allport's definition to include the viewpoint of Kantor and others interested in the rôle of culture, we may define social psychology thus: Social psychology is concerned with the stimuli and responses arising in inter-human relations and from culture.

But when the general field of sociology is defined, we have by no means finished with methodology. The aim of any science is to clarify phenomena and their relations to other phenomena. The important methodological problem is to determine which factors can be studied with the greatest accuracy and adequacy. The people who have called themselves social psychologists have been engaged almost exclusively in qualitative analysis of their field; the conflicting conceptions have arisen over this phase of the developing science. They could not agree on definitions. It clarifies matters to define the kinds of data belonging to related sciences, and it makes psychology still more comprehensible, when we determine the subclassifications of its own data. But after the qualitative anlaysis has been made, the still more difficult step of measurement has to be made. Qualitative analysis is undoubtedly antecedent to quantitative study, but the mistake has been made in assuming that it was independent. For that reason much of the qualitative analysis has to be done over in differen terms, before we have categories amenable to measurement. These two methods should proceed together. Separation of like and unlike clarifies a body of data, but separating it into such like divisions as can be measured clarifies it much

more.[9] Categories must be devised for social psychology, which are not merely topical and journalistic but which in advance are formulated with the intention of measurement.

In his recent book, *Principles of Psychology*, Professor Kantor speaks of Psychology as a natural science and then states what he conceives to be its proper aims: "(1) an understanding of an exceedingly important kind of natural phenomena, and (2) a measure of control over such phenomena; so that whenever possible they can be modified and adapted to various needs."[10] Those are about the same objectives which Watson put down for psychology. They contemplate exactness. Exactness is only possible, when some means of measurement is devised. Instruments, tests, and other means of observation must be adopted or invented outright. Until this is done social psychology will be a species of higher journalism and will not enable man to secure a very large "measure of control over" the phenomena of culture and inter-human contact.

The educational psychologists have been working at the problem of categories suited to the use of quantitative method. The various types of intelligence tests are the concrete results of this work. A group of psychologists headed by Professor J. McKeen Cattell organized a "psychological corporation" for the purpose of testing people for various occupations. Such methods will lead to "a measure of control." The intelligence tests attempt to grade ability in a group; if a sufficiently large number is taken the result conformes closely to the curve of normal probability. These tests are said to measure inherited capacity. Whether that be granted or not, they certainly test the degree of familiarity with the varieties of culture represented by the tests. For example, a Zulu could never pass the Terman test, how-

---

[9]Professor Wesley C. Mitchell read a paper before the combined social science meetings at Chicago Christmas in which he pointed out the loss to economics through the neglect of carrying both methods along together. This paper will probably appear in the spring number of the *Quarterly Journal of Economics*.

[10]P. 1.

ever rapid and accurate his responses might be, unless he were familiar with American culture; he would not be able to read the words to begin with. In the occupation tests it may be possible to make extensive use of instrumentation; for many movements in industry and commerce are entirely mechanical, after the proper conditioned reflex is set up, and instruments may measure the probability of an individual's being able to develop this reflex. Such measurements, however, are more adapted to general psychology than to social psychology which deals with cultural and inter-human responses.

The so-called intelligence test is not the only kind of a test that may be valuable in social psychological measurements. In order to determine the trend of development in attitudes toward an institution or modes of group contact tests may be devised on the order of the "true-false" test worked out by the educational psychologists. It is possible to work out such a test to measure the change from religious orthodoxy among college students. It differs from the intelligence test in that the attitude or belief is wanted; the person marking the examination may ask any question about any statement, if it is not clear to him. This sort of a test has been used recently in one state college and four church colleges in Texas. Another test has been worked out for the purpose of studying the prevalence of nationalistic attitudes. A graduate student at Teacher's College, Columbia University, has such a test with sixty categorical statements concerning the intelligence tests, which he has mailed out to people all over the United States. Such a test may be arranged to get a graded reply: true, probably true, false, probablly false, or doubtful.

The results of these are then tabulated and subjected to statistical analysis. By calculating percentages and the use of various measures of dispersion a fairly accurate result may be obtained, which shows to what degree a cultural trait has been similarly responded to. The differential responses are determined by the exposure of the individuals to approximately the same stimuli; but, if their inherited

neural connections differ in quality and if they have not been exposed to identically the same stimuli under consideration, the variation will be correspondingly greater. If the categories of social psychology are formulated with the definite intention of measurement, more concrete results are likely to follow; we shall know with some exactness the prevailing reaction to social institutions among different groups.

THE DISTANCE PRINCIPLE IN RAILROAD RATE MAKING

FAITH ADAMS
University of Texas

Distance is a factor in the determination of railroad rates by virtue of its relation to cost of transportation.[1] There is no reason why railroad rates should be at all dependent upon the distance covered unless the distance covered is to some extent an effective element in setting the cost of transportation. The cost of transportation, however, is not determined merely by the distance over which tonnage is transported, but on the contrary is affected by a number of other factors; and the relation which cost of transportation bears to the distance covered is, because of decreasing cost, not a constant relation, but a ratio which decreases as the distance increases. A consideration of the part that distance plays in the determination of rates involves, therefore, two sub-problems. In the first

---

[1]Meaning of the distance principle: (1) claim of distance to be a measure of rates; (2) difference between absolute and corrected scales. Use of the distance principle in the historical development of rate structures: (1) Trunk Line territory; (2) C. F. A. territory; (3) Eastern Trunk Line territory; (4) Southern territory; (5) Western Trunk Line territory; (6) Trans-Missouri and Southwestern territory, *(a)* Texas intrastate rates; (7) Transcontinental rates. Attitude of the I. C. C. toward the distance principle: (1) emphasis upon preservation of natural advantages, measured by distance from markets; (2) recognition of necessity of not disturbing existing rate structures too suddenly; (3) recognition of desirability of equalizing rates, *(a)* commendation of group rates for this purpose. Attitude of the carriers toward the distance principle: (1) factors influencing carriers to oppose the distance principle; (2) difficulties, pointed out by carriers, in application of distance principle. Difficulties and advantages of the distance principle: (1) relation of distance to cost of transportation; (2) chief advantages and difficulties of cost to transportation in rate making, *(a)* advantage as preventing waste in transportation, *(b)* disadvantage as interfering with desirable equalization of rates; (3) possibility of use of distance principle in forming a sound and reasonable rate structure.

place, the relation which distance bears to cost of transportation must be examined; and in the second place, the extent to which rates can and should be based upon cost of transportation must be considered.

Since distance is not an exact measure of cost of transportation, the use of the distance principle in constructing a system of rates does not result in a scale in which the rates are exactly proportional to the distances. Originally, when the distance principle was first applied to rates in Trunk Line territory, a scale of rates between Chicago and New York was constructed by making rates from intermediate points percentages, in exact proportion to distances, of the Chicago-New York rate. In such absolute distance tariff, the mile transported is the unit of charge. The tariff is based upon increases in exact proportion to distance. In this sense, a distance scale meant multiplying the rate per mile by the number of miles transported. This distance principle of rate making is our present basis for passenger rates. But, while the distance principle is still an important element in rat making, the absolute distanc tariff as it existed in the past is not now applied to the transportation of commodities.

Thus, in the Trunk line territory, the rate above described was not long found practicable. Almost immediately it was found necessary to modify the scale to take care of terminal charges, which are independent of distance; and in latter scales it has usually been found desirable to take account of decreasing costs, so correcting the exactly proportional scale as to give rates which increase as nearly as possible at the same rate as cost of transportation. Thus the distance principle now operates in freight rates chiefly through that medium known as the "tapering tariff." Distance in tapering rates is still the basis of charge, that is, rates increase with additional distance covered. Here we have a regularly decreasing rate per mile, which makes the total charge increase at a less rapid rate than the distance, and the average rate per mile for a long haul is less

than the average rate per mile for a short haul. As an exple of a tapering mileage structure, the Central Freight Association rates are usually cited. In this scale the Zone A, first class, rates were originally planned as beginning at 16 cents per 100 pounds and the rates increased 1 cent in five-mile blocks to 100 miles, 1 cent in ten-mile blocks to 200 miles, ½ cent in ten-mile blocks to 300 miles, and 1 cent in twenty-mile blocks to 660 miles.[2] The tapering principle is used abroad to a large extent as well as in several sections of the United States. As stated by Haney, this scheme is "of great practical interest as being the leading method for standardizing railway freight rates on a distance basis."[3]

Hence at the present time by the distance principle is meant the use of distance, with corrections for terminal cost, decreasing cost, and other factors, as a measure of rates. Using distance as a measure of rates does not, of course, imply that classification and values of commodities or operating conditions of the railroad are neglected; but rates which for a given quantity of one commodity, under constant operating conditions, are in a fixed though not necessarily constant proportion to distance are said to be in confromity with the distance principle.

The first tariff charges of railroads in the United States were based, not upon value of service or cost of maintenance and operation, but upon the wagon tolls which existed at the time.[4] Most of the railroads built at this time were short roads connecting two seaports or a seaport and a town not very far inland. The economic relations of the transportation function were not complex. Hence we find that in the beginning an absolute distance tariff prevalied. Soon, however, the railroads extended, commercial as well as transportation conditions demanded consideration, and the situation rapidly became complex. This led to various modifications of the distance tariff, each section of the country,

---

[2]Vanderblue and Burgess, *Railroads*, p. 148.

[3]Haney, *The Business of Railway Transportation*, p. 343.

[4]McPherson, *Railroad Freight Rates in Relation to the Industry and Commerce of the United States*, p. 148.

in the development of a rate structure, evolving a system adapted to its own geographical situation, relation to markets, kind of traffic, and competition with other roads and with waterways. Thus each rate structure was moulded by the conditions existing in the section in which it developed. A multitude of factors have played a part in the determination of rates and often keen competition has caused the length of the haul to become a minor consideration.

In Trunk Line territory (which includes a part of the Middle West, the Middle Atlantic Seaboard, and New England) rates were influenced by various disturbing elements. The influence of water competition, the gradual extension westward of the grain-producing area, the dependence of trunk lines upon cross-line railways built by local capital, and maladjustment, resulting from intense competition, between local and through rates led to a rate situation which was so chaotic and unsatisfactory that as early as 1870 efforts were made to remedy it by the application of the distance principle. It was not until 1876, however, with the introduction of the MacGraham scale, that there was a wide application of the distance principle. By this scale through and intermediate rates were correlated, and a tariff was introduced which was in practice a distance-group tariff.[5] This tariff made intermediate rates between Chicago and New York a percentage, based upon distance, of the Chicago-New York rate. As explained in a preceding paragraph, when this tariff was first applied, rates varied directly with distance; but three years later the tariff was modified to remove the initial defect of neglect of constant terminal costs. Modifications of the rate to favor competitive points and at the same time avoid long and short haul violations resulted in the substitution of group or zone for point rates; and the zone boundaries were deflected to give highly competitive points lower percentages, to give non-competitive points higher percentages, to include each cross-line in a single zone, and to equalize rates for industries that the railroads desired to develop. The MacGraham

[5]Miller, *Railway Transportation*, p. 555.

scale was originally applied only between competitive points on eastward interterritorial shipments; but with the establishment of zones, all stations in Central Freight Association territory were placed on equal terms in so far as benefits from the tariff were concerned; and the success of the scale afterward led to its application to west-bound traffic on account of differences in competition or balance of traffic. In general, it may be said that traffic in Trunk Line territory moves on a tariff which, except for the manipulation of zone boundaries, is a corrected distance scale of rates.

Traffic moving in Central Freight Association territory (which is included in Trunk Line territory) is governed by rates which to an unusual extent are based upon distance. In 1917 this territory was divided into zones by the Interstate Commerce Commission, and in each zone or on interzone shipments a mileage scale applies. A rigid application of the distance principle was found impracticable and modifications were introduced by the grouping of two or more points on a common rate and by the inflation of mileage. This Central Freight Association scale of rates, which is described in more detail on pages two and three above, has been applied since 1918 upon traffic moving in New England; but in New England rates are point to point rather than group, and many commodity rates are not on a mileage basis.

In Eastern Trunk Line territory (which includes the Middle Atlantic States and is a part of Trunk Line territory) rates show little conformity to the distance principle, except that mileage scales are often applied to local movements of low-grade traffic. In this region rates, so far as they are systematized at all, are made upon a group or blanket basis.

In Southern territory, because of peculiar local conditions, the distance principle has been almost entirely neglected and a basing point system of rates, characterized by place discrimination, has been developed. As early as 1880, however, an effort was made by the carriers, through the Southern Railway and Steamship Association, to establish

tariffs in accordance with the distance principle.[6] Rates into Carolina territory have been based on distance, and during the present year an investigation of Southern rate structures, which will probably give distance proper consideration, has been under way.[7]

In Western runk Line territory keen competition has made rate making a process of adjusting the claims of competitive points and competitive railways, with the equalization of markets in particular sections, the primary goal.[8] Distance is largely neglected. The same rates are applied between all Mississippi River crossings and Missouri River crossings, regardless of distance; and rates on interstate movement, though they tend to increase with distance, take the form of blanket rates. Intrastate commodity rates, however, increase with distance; and class rates are largely upon a mileage basis. In general, in this territory rates are group or zone rates rather than point rates, especially on "in" and "out" tonnage.

In the Trans-Missouri territory and in Southwestern territory, though rates generally increase with distance as traffic moves westward, competition has created a number of common points. Under the common-point system of rates, considerable areas are covered by blanket rates, which disregard distance. In Texas, common-point rates were formerly given to the eastern two-thirds of the State from points beyond the Mississippi and Missouri rivers; but this common-point system was modified by the carriers and the Interstate Commerce Commission in 1916. Until recently Southwestern rates have been chaotic and inconsistent, and have given small attention to distance. Since 1921, however, interstate class traffic has in general moved on distance scales. Since 1923 commodity traffic has likewise been subject in a large measure to rates based upon distance.

In the early days Texas intrastate traffice was governed by

---

[6]Ripley, *Railroads: Rates and Regulations*, p. 391.
[7]Haney, *The Business of Railway Transportation*, p. 389.
[8]Miller, *Railway Transportation*, p. 580.

the so-called "Graded and Maximum" rate scale introduced by Judge Reagan, head of the Texas Railroad Commission. According to this scale, all tonnage moving beyond a certain distance, but within common-point territory, was given a uniform rate. In the West, though, beyond common-point territory, rates again increased with distance above the maximum rate which was uniform in common-point territory.[9] This system was modified in 1916 by the Shreveport Case.

Water competition, competition among the railroads, and industrial competition[10] have, in their influence upon the development of the Transcontinental rate structure, resulted in a system of rates in which distance is almost entirely disregarded. Formerly a blanket charge was made from all points on and east of the Missouri River to the Pacific Coast terminals; and intermediate territory was discriminated against in various ways. In 1911 the Interstate Commerce Commission divided the United States into five zones for rate making on west-bound transcontinental traffic. This order was modified to some extent in 1915, 1916, and 1917. At the present time the coast and intermediate points are given blanket rates. For commodity rates for both east- and west-bound tonnage large areas are blanketed. West-bound class tariffs, however, are upon a group-distance basis, and east-bound class tariffs are constructed in a similar fashion.

It will be seen from the above survey that the distance principle in rate making has been applied extensively only in the Trunk Line, Central Freight Association, and New England rate structures. In no territory, though, has distance been altogether disregarded as a measure of rates; and in all the territories the distance principle has, through the efforts of the carriers themselves or by order of the Interstate Commerce Commission, been at some time or another used as a means of removing discriminations and coördinating rates.

---

[9] *Ibid.*, p. 594.

[10] See Johnson and Huebner, *Railroad Traffic and Rates*, p. 457 ff.

The Interstate Commerce Commission has never had an unchanging and complete system of rate making; but the distance principle has been an old and much-used instrument of that body. Not long after its organization, the Commission adopted the principle that each locality is entitled to its natural advantages. Favorable location with reference to markets is an important natural advantage; consequently, we find in many of the early holdings of the Commission the doctrine that carriers have no right to disregard distance and natural advantages of localities for the purpose of bringing about commercial equality.[11] The Commsision was anxious to retain for each locality its natural advantages in situation, and for measuring such advantages, distance was the most convenient instrument.

This doctrine that natural advantages measured by distance is to be preserved is maintained to some extent up to the present time;[12] but this attitude was soon modified as a result of the experience of the Commission with the complexities of the rate structures. In *Cannon* v. *Mobile & Ohio Railway Company*, the Commission gives the following opinion, which is typical of its recent attitude in regard to distance:

> . . . while in the relative adjustment of rates as between places on its lines a carrier cannot rightfully ignore the relative cost to it of the respective services rendered by it, and . . . cannot rightfully ignore substantial differences in distance where all other circumstances and conditions are equal, or substantially similar, there are other matters of equal importance to that of cost of service. . . . Among these is competition both of carriers and of markets.[13]

In the case of the *Commercial Club of Superior* v. *Great*

---

[11] *E.g., Freight Bureau of the Cincincinnati Chamber of Commerce* v. *C., N. O., & T. P. R. R. Co.*, 6 I. C. C., p. 194 (1897). *McMorran* v. *Grand Trunk R. R Co.*, 3 I. C. C., p. 252.

[12] *Cf. Omaha Grain Exchange* v. *C., M.* N *St. P. Ry. Co.*, 24 I. C. C., p. 123 (1912).

[13] 11 I. C. C., p. 542 (1906).

Northern Railway Company, the following more decisive holding is found:

> If any distance alone were the measure of relationships of rates, each market would control practically the entire grain within a given radius of that market.[14]

The Commission seems never to have abandoned the idea that rates should be based primarily on distance, though it saw the necessity of recognizing that rates had not been developed upon the basis of distance, and that transformation of rate systems must take place gradually. In 1912 the Commission asserts that:

> The future may compel greater recognition of distance in the making of rates, but the present business structure was not developed on that principal; and if a change is to be made, such change perforce must be a gradual one.[15]

And in the same year it asserts that "in the end there must be some relation between cost of service and rates."[16]

The Commission early commended certain forms of group rates which to a certain extent disregarded distance; and its approval of group rates has usually been the reverse side of its qualification of the application of the distance principle. The attitude of the Commission toward such group rates is represented by the following holding:

> Blanket or group rates very often grow out of commercial, competitive, or transportation conditions. . . . Many districts with a characteristic traffic . . . under current tariffs are divided into one or more rate groups. Areas underlaid with coal, ore, or other minerals are often broken up into rate zones according to their grade or quality. Blanket or group rates resting on such conditions have many times been commended by the Commission, because, although they usually involve some disregard for distance, they nevertheless promote a healthy competition and put producers and consumers on a more or less equal basis.[17]

---

[14] 24 I. C. C., p. 110 (1912).

[15] *Boileau* v. *Pittsburgh & Lake Erie Ry Co.*, 24 I. C. C., p. 132.

[16] *Albree* v. *B. & M. R. R.*, 22 I. C. C., p. 712.

[17] *Humphrey Brick and Tile Co.* v. *Pennsylvania R. R. Co.*, 50 I. C. C., p. 457.

In the main it may be said that with the exception of its recognition of the necessity of not disturbing too radically the existing rate structures, and of its opiniion that market and producers' competition should be preserved, the Interstate Commerce Commission has been inclined to favor the use of the distance principle in the fixing of reasonable rates.

Though the carriers have themselves in several important instances favored or instituted a tariff based upon distance (notably in the case of the application of the MacGraham scale in Trunk Line territory), as a rule any close conform to a distance scale has been obtained only by the orders of the Interstate Commerce Commission or of the state commissions. It is to the advantage of railroads to equalize rates for competing producing centers, regardless of comparative distances. The competition of other roads in securing traffic free to move over more than one route, as well as market competition, influences carriers in determining a rate. These factors do not consider distance. In some instances carriers have taken the point of view that a road should be permitted to make such rates as will enable it to secure maximum tonnage, asserting that despite discrimination, this will result in the largest industrial and trade development. This attitude is encountered more frequently in the past history of the roads than in the present. One of the strongest statements in favor of the equalization principle is that made by President Tuttle of the Boston & Maine and quoted by Professor W. Z. Ripley in *Railroads: Rates and Regulation:*

> It is the duty of transportation agents to so adjust their freight tariffs, that regardless of distance, producers and consumers in every part of this country shall, to the fullest extent possible, have equal access to the markets of all parts of this country and of the world, a result wholly impossible of attainment if freight rates must be constructed upon the scientific principle of tons and miles.[18]

The public does not approve of such disregard of distance,

[18]Ripley, *Railroads: Rates and Regulation*, p. 133.

in many cases, however, and inclines to the view that "distance should be given such weight in raliway rate schedules as to assure each locality its natural advantage of location."[19]

Another objection raised by the carriers is that the distance principle totally disregards utility of service and the ability of shippers to pay.[20]

Although weight and distance are both factors affecting cost of service, yet carriers appreciate the fact that expenses do not rise proportionately with increase in either factor. Thus a less charge per ton per mile for a long haul than for a short haul is justified by differences in cost of service.[21] Terminal expenses, maintenance, and labor paid by the hour do not vary with distance. Engineers say that "at most the cost of the line haul increases only as the square root of the distance."[22]

In specific cases, water competition renders a distance rate impracticable. Such is the case in through rates to Pacific Coast terminals and rates to inter-mountain cities.

It will be noticed that the objections of the carriers to the use of the distance principle in rate making may be divided into two groups: first, arguments tending to show that distance is not a measure of cost of transportation, and second, arguments directed against the use of cost of transportation as a basis for rate making. The arguments in the first group are no doubt valid in so far as they tend to show that cost does not vary exactly with distance; and it is certain that the facts of joint cost and decreasing cost for increasing tonnage and increasing mileage complicate the relation of distance to cost. It must be remembered also that other factors, such as bulk of the commodities, nature of operating conditions, and nature and direction of traffic, play a part in determining the cost of transportation. On the other hand, it is possible that when corrections for these factors are made upon the basis of a careful system of cost

---

[19]Johnson and Huebner, *Railroad Traffic and Rates*, p. 370.
[20]Haney, *The Business of Railway Transportation*, p. 186.
[21]Johnson and Huebner, *Railroad Traffic and Rates*, p. 367.
[22]Haney, *The Business of Railway Transportation*, p. 186.

accounting, distance can be used successfully as a measure of cost. The Interstate Commerce Commission in 1911 expressed the following optimistic opinion:

> Once we have learned the comparative costs for various services, it is not fanciful to say that a schedule of rates may be made which will approach justice as between services. . . . Such a theory gives force to every factor which the Supreme Court has said should be considered in the fixing of rates for public utilities.[23]

and Miller, in 1924, asserts that:

> Once the carrier awake to the need of accurate cost accounting and make sincere efforts to arrive at specific costs, it is probable that the joint cost "bogie" will be found to be largely a thing of straw.[24]

It might also plausibly be contended that even though specific costs cannot be accurately determined by cost accounting, the distance principle may, after all possible corrections have been made, be used without any great error in dividing the total cost of maintenance and operation among the various tonnages transported.

If distance can be used to measure the cost of transportation, it is clear that the carriers would be interested in the use of distance to a sufficient extent to avoid carrying tonnage at a loss. From the view of the public, however, the distance principle would be valuable from another aspect. It is to the public interest, when allowances are made for desirable group rates equalizing producers' costs, for rates to be based upon cost of production, since allocation of specific costs to each product is necessary, under a competitive system, to control the volume and direction of production. "Transportation over undue distances . . . the carriage of coals to Newcastle in exchange for cotton piece goods hauled to Lancashire . . . as a product of keen commercial competition may involve both a waste of energy

---

[23] Advance in Rates, Western Case, 20 I. C. C., p. 362.
[24] *Railway Transportation*, p. 542.

and an enhancement of prices in a manner seldom appreciated."[25] Unless production and marketing are controlled by direct government supervision, production of goods at a distance so great from the markets as to make the production actually at a loss from the social point of view, and transportation of goods by circuitous or wasteful routes can be avoided only by basing of rates upon cost of transportation.

It is true, as the Interstate Commerce Commission has often held, that the maintenance of market competition is of importance to the public; and the maintenance of competition may be promoted by the equalization of rates. Under a system of equalized rates, social welfare is promoted, however, not so much by the promotion of competition, since the determination of rates upon the basis of cost merely eliminates the submarginal producer and leaves marginal producers as competitors, as by the elimination of excess profits. If producers over a considerable area are given a common rate to markets, and if this common rate is based upon the average cost of transportation in the group, then, in effect, the producers located farthest from the markets will be taxed. Under such an arrangement, the marginal producer setting the price will have included in his cost of production the actual cost of transportation; and consequently the price to the consumer will be less than it would be if all rates were based upon cost of transportation and price set by the producer farthest from the market. This is the theory which supports the Interstate Commerce Commission's commendation, under certain conditions, of group rates. As was pointed out in the preceding paragraph, however, such a rate structure, in a competitive society, provides no means for preventing waste in transportation. Only by allowing each producing center to enjoy its natural advantage, measured by cost of transportation to market (undesirable as it may be for supra-marginal

[25] Ripley, *Railroads: Rates and Regulation*, p. 277.

producers to receive the resulting unearned profit) is it possible to insure the location of production at points where it will be most advantageous.

Although the working out of the relation between distance and cost of transportation, so that distance can be used as a measure of transportation, is a difficult and complicated task; and although the application of the perfected measure may involve many qualifications, still the use of distance as a basis of rates offers a promise of a sound, stable, and reasonable rate structure. Whether or not such rate making will ever become practicable remains a question for the future to solve.

ANNUAL MEETING OF THE ASSOCIATION

The sixth annual meeting of the Southwestern Political and Social Science Association was held at the Jefferson Hotel, Dallas, Texas, March 30 to April 1, 1925. A total of 110 registered for the various sessions, this being at least 30 per cent more than any previous meeting. Included in this number were representatives of practically all the colleges and universities of the Southwest, of several high schools, of the United States Department of Agriculture, of the Texas Farm Bureau, and of civic clubs and organizations. The wide appeal of the various sections on sociology, social psychology, economics, history, government, and international relations is attested by the fact that the average attendance upon the sectional meetings averaged between thirty and forty.

The session on Monday morning, devoted to sociology, was presided over by Professor W. P. Meroney, of Baylor University. The following papers were read: "Inherent Race Differences," by Professor W. P. Davidson, Southwestern University; "The Government of the Less Advanced Races by the More Advanced," by Professor A. C. Burkholder, Southwest Texas State Teachers' College; and "Our Immediate Race Problems," by Professor W. E. Garnett, Agricultural and Mechanical College of Texas. Professor J. E. Pearce, University of Texas, led the discussion of these papers.

At the Social Psychology Section Monday afternoon, presided over by Professor M. S. Handman, University of Texas, four papers were presented. Professor D. B. Klein, University of Texas, read a paper on "The Instinct Controversy." The second paper, by Dr. H. I. Gosline, Child Guidance Clinic, Dallas, was entitled "The Content of Social Psychology." The third was a discussion by Professor Handman of "Psychological Technique as Applied to the Social Sciences," and the fourth, by Professor R. Clyde White, Agricultural and Mechanical College of Texas, was on "The Relation of Psychology to the Social Sciences."

Monday evening the attending members of the association were entertained at a complimentary dinner given by the Knife and Fork Club of Dallas. The address of the evening was made by Dr. John C. Granbery, of Southwestern University, who took "The Constitution Cult" for his subject. The presiding officer was Dr. A. V. Lane, president of the Knife and Fork Club.

The session Tuesday morning, presided over by Professor B. Youngblood, Agricultural and Mechanical College of Texas, was given over to the Economics Section. Professor E. T. Miller, University of Texas, presented a paper on the "Present Status of the Gold Standard." The next paper, presented by Professor Donald Scott, Southern Methodist University, was entitled "Can the Centralized Coöperative Cotton Marketing Association Economically Displace the Independent Middlemen?" This paper was discussed by Professor R. H. Montgomery, University of Texas, and by representatives of the Texas Farm Bureau. The third paper in this section, entitled "Some Phases of the History of Farm Mortgage Banking in the United States," was read by Professor V. P. Lee, Agricultural and Mechanical College of Texas, and discussed by Professor William F. Hauhart, Southern Methodist University. "Possible Functions of a Statistical Service in Centralized Farmer Coöperative Associations," read by Mr. H. H. Schutz, Bureau of Agricultural Economics, and discussed by Professor C. M. Purves, Agricultural and Mechanical College of Texas, was the subject of the next and last paper of this session.

Four papers were presented Tuesday afternoon at the session of the History Section, persided over by Professor R. A. Hearon, Southern Methodist University. These papers were as follows: "The International Aspects of the Anti-Slavery Question, 1820–1840," by Professor T. P. Martin, University of Texas; "The Attempt to Reopen African Slave Trade in Texas, 1857–1858," by Professor W. J. Carnathan, Southwestern University; "The Confederate State Government of Arkansas, 1861–1865," prepared by Professor D. Y. Thomas, University of Arkansas, and

read by Professor C. W. Ramsdell, University of Texas, since Professor Thomas was unable to be present; and "The Effect of the Repeal of the English Corn Laws on Russian Serfdom," by Professor Joseph Gregory Maytin, University of Texas.

Shortly after the adjournment of the Tuesday afternoon session the members in attendance upon the association were taken on an automobile trip over the city by a delegation of Dallas citizens.

Tuesday evening the members of the association were guests of the Southern Methodist University at a fellowship evening and smoker, given on the roof of the Jefferson Hotel. Special features of the entertainment were violin and piano selections, songs, choruses, and vaudeville skits presented in a most delightful manner by students of Southern Methodist University.

The session of the Government Section, presided over by Professor H. H. Guice, Southern Methodist University, came Wednesday morning. Inasmuch as Professor Harry A. Barth, University of Oklahoma, was unable to be present, his paper on "Judicial Discretion" was read by Professor O. Douglas Weeks, University of Texas. Professor Allen M. Ruggles, University of Oklahoma, presented a discussion of "Present Tendencies of the Administration of the Civil Service," and Professor Harvey Walker, University of Kansas, read a paper on "Problems of The City Manager Plan."

The Wednesday afternoon session, presided over by Professor H. H. Guice, Southern Methodist University, in the absence of Professor D. Y. Thomas, University of Arkansas, was devoted to the International Relations Section. The papers presented were as follows: "The Protocol Adopted at Geneva," by Professor H. M. Greene, Southwest Texas State Teachers' College; "England in Egypt Since 1914," by Professor E. M. Violette, Louisiana State University; and "World Courts, Stepping Stones to Peace," by Mr. F. G. Swanson, Wichita Falls.

Tuesday at noon the annual business meeting of the association, presided over by Mr. G. B. Dealey, first vice-president of the association, was held in the roof garden of the Jefferson Hotel. The minutes of the last business meeting, held at Texas Christian University, Fort Worth, Texas, March 25, 1924, were read by the secretary and approved.

The following tables serve to summarize the report of the secretary-treasurer on membership and finances.

I. MEMBERSHIP

Members added during the year	47
Resignations (including cancellations for nonpayment of dues)	23
Net gain in membership	23
Contributing members	7
Sustaining members	8
Active members	188
Total membership, March 30, 1925	203

II. FINANCES

RECEIPTS

Membership:		
Contributing	$ 55.00	
Sustaining	50.00	
Active	325.05	
Total for Membership Dues		$430.05
Sale of Quarterlies		58.50
Sale of Proceedings		157.00
Contribution to Print Proceedings		679.12
Refund on Postage		8.54
Refund on Reprints		93.40
Binding Quarterlies		10.00
Advertising in Quarterly		9.00
University of Texas Appropriation		500.00
Total Receipts		$1,945.61

EXPENSES

Traveling		$ 43.00	
Printing Quarterly:			
June, 1924, 500 copies	$260.33		
September, 1924, 500 copies	190.68		
December, 1924, 500 copies	175.39		
March, 1925, 500 copies	248.53		
Total for Printing Quarterly		874.93	
Printing Reprints		102.25	
Printing Proceedings		679.12	
Other Printing	4.50		
Correcting Reprints	4.00		
Title Page—Proceedings	10.50	19.00	
Supplies		6.61	
Postage		37.90	
Clerical Help		9.20	
Expressage		.75	
Binding Quarterlies		7.75	
Checks Returned		3,14	
Total Expenses			1,789.65
Balance for Current Year			$ 155.96
Balance from Last Year March, 1924			319.33
Balance March 28, 1925			$475.29

The treasurer's accounts were audited by a committee composed of Professor W. F. Hauhart and A. C. Burkholder and were reported correct. A motion was made and adopted expressing the association's appreciation of the work of the retiring secretary-treasurer, Professor Frank M. Stewart, University of Texas.

Professor Herman G. James, in his report as editor of the *Quarterly*, called special attention to the fact that the association, through the generosity of one of its friends, who desired that his name not be made public, had been able to publish the *Proceedings* of the fifth annual meeting. He stated further that this same friend would finance the *Proceedings* of the sixth annual meeting. In view of this

he emphasized the value of all subscribers securing an unbroken series of both the *Proceedings* and the *Quarterly*. The next point he considered was with reference to the acceptance of advertising for the *Quarterly*. He stated that the policy decided upon was to accept advertising if it related to the field of the social sciences. He then asked for generous financial support of the *Proceedings* and the *Quarterly* and concluded by offering a motion, which was unanimously adopted, expressing the thanks of the association to the donor of the funds for the publication of the *Proceedings*.

At this point Professor T. P. Martin offered a recommendation, which was approved by the members present, that the executive committee amend the by-laws to provide for a new class or order of members to be known as patrons and to fix the status and condition of such members. He made the following suggestions in this connection: (1) that the new class of members be known as patrons; (2) that admission to this class be limited to those who have contributed at least $100 to an endowment fund for the association; (3) that the president appoint each year a committee on patrons to bring the new order or class to the attention of the people of the Southwest.

The report of the committee on nominations was made by Dr. H. G. James. Officers for 1925–1926 were nominated and elected, as follows: President, Dr. W. B. Bizzell, President of Agricultural and Mechanical College of Texas; vice-presidents, Mr. G. B. Dealey, Dallas, Texas; Professor F. F. Blachly, University of Oklahoma, and Professor D. Y. Thomas, University of Arkansas, all reëlected; members of the executive committee, Professor B. Youngblood, Agricultural and Mechanical College of Texas, and Professor W. F. Hauhart, Southern Methodist University; chairman of the program committee, Professor E. T. Miller, University of Texas.

Following the election of officers miscellaneous matters before the business meeting were considered. Attention was called to the special invitation to visit the plant of the *Dallas News*. Professor Handman offered a resolution of

thanks to the *Dallas News* for the splendid coöperation of that paper in making the sixth annual meeting a success. The resolution was unanimously adopted. Dr. James then offered a resolution of thanks to Southern Methodist University, the Civic Federation of Dallas, the committee on local arrangements, and the Dallas Knife and Fork Club, for the splendid entertainments which they provided for the association. The resolution was adopted with enthusiasm. Finally, Dr. James, speaking for Professor Spurgeon Bell, Dean of the School of Business Administration, University of Texas, called attention to the fact that the schools and departments of commerce and business administration in the Southwest would like to be considered an integral part of the association. He stated, therefore, that they would be given a section on the program of the next annual meeting.

Immediately after the adjournment of the business meeting, President Bizzell called a meeting of the executive committee. In addition to President Bizzell, the following members of the committee were present: Mr. G. B. Dealey, first vice-president; Professor H. G. James, editor of the *Quarterly;* Hon. George Vaughan, an ex-president; Professor E. T. Miller, chairman of the program committee; Mr. F. M. Stewart, secretary-treasurer, and Professors W. F. Hauhart and B. Youngblood, elected members of the committee. Dr. H. G. James was reëlected editor of the publications, and Mr. Charles A. Timm, University of Texas, was elected secretary-treasurer. The present advisory editorial board, consisting of F. F. Blachly, W. B. Bodenhafer, H. B. Chubb, C. F. Coan, M. S. Handman, D. Y. Thomas, and G. P. Wyckoff, was retained. The time and place of the next annual meeting were postponed for later determintaion by the executive committee. A motion was made and unanimously adopted that the by-laws be amended to care for the substance of the recommendations offered by Dr. T. P. Martin concerning a new class of members to be known as patrons.

CHARLES A. TIMM, *Secretary-Treasurer.*

BOOK REVIEWS

EDITED BY B. F. WRIGHT, JR.
University of Texas

WILLOUGHBY, WESTEL W. *The Fundamental Concepts of Public Law.* (New York: Macmillan, 1924. Pp. xvii, 439).

The spirit and method of Austin live again in this work of Professor Willoughby's. To be sure, the author criticises the great English jurist as regards certain aspects of his theory, particularly on the question of sovereignty, but nevertheless, his point of view and his conclusions are substantially the same. His purpose in the present volume is the analytical determination of the fundamental concepts which are employed by jurists in dealing with the State. Believing that it is unfortunate that political science lacks a distinct and precise nomenclature, Professor Willoughby attempts to get at the problem by a deductive study of fundamental terms. In fact, the first part of the book is not a study in political philosophy at all, it is not even about political philosophy, but rather an essay in definition. Part II contains a brief analysis of the principles laid down by the courts in a few branches of public law. The subjects treated in the part on definitions include the juristic personality of the State, the concepts of the State, of government, of nation and people, sovereignty, the nature of positive law, the Federal State and the concept of the State in international law. In the second part, where the intention is to apply these concepts to certain problems of constitutional and international law as illustrated by judicial decisions, he discusses territorial and personal jurisdiction, *de facto* and *de jure* governments, extra-territorial jurisdiction, the conflict of laws and the suability of the sovereign. The reasoning of the book is too close and the content too compact to permit of successful summary. It must suffice here to say that his careful and discriminating criticism of certain of the views of the analytical school of jurists leaves his main position in substantial harmony with theirs. In other words, his intention is to find out what the principles of law are as they have been set forth by the courts, not to criticise or even to evaluate them as working rules of law. They are considered as pure rather than as applied law, and any evaluation that appears is of their logical relation to the body of the law, not of their good or bad effects upon individual or governmental relations.

In the introduction we are told that this book will be supplemented by one on the ethical right of the State to exist and the legitimate extent of its authority. Until this work appears it will be impossible adequately to review the present work, for, as it stands, it seems to

present but one side of the author's views. However, there are two opinions which I believe may be expressed at this time, even at the risk of anticipating matter to be discussed in the forthcoming volume.

First, it may be questioned whether the purely analytical, or, as Professor Willoughby calls it, the deductive method, is a sound and useful one at the present time. Valuable a century ago when the greatest need was for a period of legalistic clarification before the great legislative reform movement of the Nineteenth Century got too well under way, is its period of usefulness not of the past rather than of the present? I cannot but feel that the present need is largely for an external rather than an internal study of public as well as private law. Many of our political scientists, lured on by the seeming certainty and simplicity of the modest platitudes connected with the term "scientific method," would apparently make statistics an end in itself and refuse to consider any idea whose truth is not capable of inductive verification. Such exaggerations of the value of studying political and legal institutions and rules as working systems rather than as mere exercises in the use of the syllogism or the undefinable if legal logic do not destroy the virtues of placing a great amount of emphasis upon that ever pertinent if ever difficult to answer question—how does it work? Now, if analytical jurisprudence were never to be applied to politics, this criticism would be as absurd, as out of place, as an objection to a philosopher's writing a book on metaphysics because that subject does not help one to solve the problem of building up a satisfactory philosophy of life. But just as metaphysically derived principles have (erroneously, I think) been more than once asserted to be the true basis of life, and of politics, so the deductions of the analytical jurists are not long kept in the realm of abstract thought. The inevitable tendency is to apply them to practical matters. Thus the beautifully monistic theory of sovereignty does very well as a nice legal concept, but it has little relation to political realities, and yet it is not necessary to summon up individual writers in order to prove that many jurists and political theorists have proceeded to apply the doctrine of Austin (and of Hobbes and Bentham before him) to legal and political problems to which it had no proper application. So, too, with the theory of positive law. And it seems to me that for all of his attempt in this book to refrain from dealing with working systems of public law Professor Willoughby has fallen into the error of application where speculation alone should be found.

My other main criticism of this week arises out of the apparent confusion of what is termed "pure political theory" with abstract and analytical jurisprudence. Whatever "pure political theory" may be, it is certainly not to be identified with formalistic legal philosophy. To separate political theory from the workings of the political order

and to confuse it with analytical jurisprudence, even for purposes of definition, can but render it completely sterile. In short, there is at present an excessive dualism in this study of public law, an undue separation between the legalistic or formalistic side of political philosophy and the instrumental, between the definition of concepts and the application of those concepts to what Lieber calls politics proper. It has for some time seemed to me that this separation is partly responsible for the utter barrenness of American political theory during the last half century. A more important cause of the recent poverty of political theory in this country is, however, avoided by Professor Willoughby: this is not a mere annotated bibliography. The author has opinions, carefuly thought out and well expressed. And even those of us who disagree with his point of view can rejoice and be exceedingly glad that political theory in the United States is not entirely dead. We can also look forward with interest to the forthcoming book which is to deal more specifically with the author's ideas on the theory of politics.

B. F. WRIGHT, JR.

SPLAWN, WALTER M. W. *The Consolidation of Railroads.* (New York: The Macmillan Co., 1925. Pp. 290).

This is a timely and useful book, and it is a pity that there are not more books of a similar character. In recent years Congress has conducted hearings on our banking systems, the tariff, on the conditions and needs of agriculture, and the like, and these have been published in numerous and bulky volumes which soon become forgotten dust-covered tombs of a mass of valuable information. If this information were analyzed and clarified in books like this one of Dr. Splawn's, and if such books were widely read, or even read by those who mold public opinion or shape legislation, it would make for a more intelligent settlement of our governmental questions of an ecomonic kind.

By reason of his knowledge of the question, which he gained as a student and teacher of the subject of transportation and as a member of the Texas Railroad Commission, Dr. Splawn was uniquely qualified to make this study of railroad consolidation. Within rather small compass he traces the history of the consolidation clause of the Transportation Act of 1920—which history includes the inception of the clause, what was in the minds of its protagonists, and what have been the consolidations proposed, either absolutely or tentatively, by the expert of the Interstate Commerce Commission, by the Commission itself, and by others. Also, he surveys the merits and weaknesses of the proposals and the relative advantages of compulsory and of voluntary consolidation.

Dr. Splawn makes a number of interesting, and, one is tempted to say, alarming, discoveries and conclusions. Thus whereas the primary purpose of Congress in adopting the consolidation clause was to help the weaker railroads, this purpose, he thinks, was lost sight of in the groupings so far proposed and in the hearings conducted by the Interstate Commerce Commission. His intimate knowledge of the systems of the Southwest gives special value to his adverse criticism of the groupings proposed in the Ripley Report and in tentative plan of the Interstate Commerce Commission of the roads of the Southwest, and particularly those of Texas. He weighs the advantages claimed for consolidation, especially for wholesale and compulsory consolidation, and concludes that they either will not exist or will be offset or more than offset by disadvantages. His analysis and criticism of forced consolidation are incisive and vigorous.

The advocates of compulsory consolidation have contended that their method was the only avenue of escape from government ownership. Dr. Splawn does not agree with them. Instead of being caught by their contrived dilemma, he acutely and neatly places them in a dilemma. Government ownership would be, according to him, a calamity, but equally calamitous, he thinks, would be compulsory consolidation, and it is his opinion that compulsory consolidation would almost surely develop such difficulties as to make government ownership unavoidable. His solution of the matter is permissive consolidation; that is, voluntary and gradual consolidation, and only that which can be shown to be in the public interest. Of this method he is a persuasive advocate.

E. T. Miller.

University of Texas.

Shirras, G. Findley. *The Science of Public Finance.* (London: Macmillan & Co., 1924. Pp. xxii, 677).

The author of this notable work is a member of the Indian Civil Service. He brought to his task of authorship a sound university education, long experience as a student of finance and as a finance official, and a scholarly method. He was already well known by reason of his earlier work on *Indian Finance and Banking.*

C. F. Bastable's *Public Finance* appeared in 1893. While not so philosophical or so charmingly written as Henry Adams' *Finance* (1898), Bastable's work was a masterpiece which had no equal among general treatises on finance in English up to the publication of the present book by Mr. Shirras.

This is a timely book, as it is the first treatise on public finance to survey comprehensively the changes in financial theories and

methods wrought by the Great War. We of the United States know what the war did for us, and now Mr. Shirras, among other things, traces for us the history of the changes in the principal European systems.

In general, in his ideas as to the scope of public expenditures, the extent of taxation, and the handling of the huge public debts, he is more conservative than his British contemporaries, Dalton, Hobson and Robinson. He is less of the advocate and more of the historian and expositor than are they.

In the field of public expenditures he takes neither the position that the government should do everything nor that it should do nothing. He emphasizes the growth of social service expenditures, but he classes these as secondary, regarding as primary what governments are "obliged above everything else to undertake"; namely, defense, law and order, and the payment of debt. However, he believes that with the development of social consciousness there will be a tendency for an increased outlay on public undertakings.

As is characteristic of all books on public finance, the bulk of the contents is devoted to taxation. He reviews the principles in a lucid and interesting way, and he contributes two novel chapters, one dealing with the measurement of taxable capacity, the other with the burden of taxation or the proportion of taxes to national income.

There are separate chapters dealing with taxes on land, income taxes and inheritance taxes, and in his accounts of these as well as of other taxes, the practices—both historical and present—of the principal countries are reviewed. While more attention is paid to national systems, the local are not neglected.

The subject of public debts is given the consideration which its importance merits. A helpful feature of his treatment is a history of the public debt of each of the principal world powers. The capital levy as method of debt repayment is weighed pro and con by him, and his conclusion is against such a method at this time. Time and hitherto used conservative ways of reducing debt are apparently what he would rely upon for the reduction of the existing huge national debts.

His treatment of financial administration is confined largely to an account of the budget. It covers the practices of the leading countries; it is theoretical and practical, and is both historical and current.

Finally, there are forty-five pages of statistical appendices, which add greatly to the usefulness and value of the book.

E. T. Miller.

University of Texas.

GOMPERS, SAMUEL. *Seventy Years of Life and Labor.* (New York: E. P. Dutton & Co., 1925. Vol. I, pp. xxxiv, 557; Vol. II, pp. xxvii, 629).

Samuel Gompers' autobiography is at once a history and a philosophy of American trade unionism. For almost fifty years he was the dominant figure in the making of that history and in the shaping of that philosophy. Trade unionism was his religion, and he was its chief apostle. And rarely, if ever, has greater devotion been given to a cause. Associates, friends, his own personal interests, even his wife and children, all were subordinated by Samuel Gompers to his work in behalf of the workers of the United States. The offer of bribes by employers, the tender of public office and influence by politicians, opportunities for wealth-making held out to him by business men impressed with his ability or moved by desire to divorce him from leadership of the labor movement—all these and other temptations influenced him not at all. Whatever doubts one may entertain as to the validity of his philosophy, the expediency of his program, or the utility of his tactics, one cannot, after reading the two volumes of his autobiography, doubt the honesty of the man in his own beliefs, the sincerity of his convictions, or the unselfishness of his devotion to the cause of the working class. He had his faults, many of them, but selfishness, avarice, and hypocrisy were not among them.

Obviously, however, Mr. Gompers' autobiography could not be an objective and impartial history of the American labor movement during the past fifty years. He was a man of too strong convictions and was too much in the thick of the struggle to give an uncolored account of it all. His history is, therefore, one-sided and to a large extent prejudiced, not so much by what it includes as by what it omits. Mr. Gompers stands out always as the leading actor in the drama, and no timidity or false vanity restrains him from emphasizing the extent and importance of his accomplishments. Yet other autobiographies have been known to offend more in this respect, and with much less justification.

Probably like all leaders, Mr. Gompers was intolerant of opposition. He refuses to believe that it is possible for any labor philosophy and motives of those who differed from him on the principles and tactics Except in the case of the Socialists, he is careful not to impugn the program differing from his own to possess any validity whatsoever. of labor organizations, yet he is unsparing in his criticism of these opposition principles, programs, and tactics. He believed that their proponents, though probably well-intentioned and well-meaning men, were grossly in error, and therefore dangerous.

The Knights of Labor, for instance, with which the American Federation of Labor had to contend for survival and supremacy during

the latter 'eighties, is characterized as "a hodge-podge with no basis for solidarity with the exception of a comparatively few trade assemblies," "a social or fraternal organization . . . priding itself upon being something higher and grander than a trade union or political party," "seeking to arrange the affairs of trade unions regardless of labor's interests," an organization, he admits, "of high ideals," but "purely sentimental and bereft of all practical thought and action." His sharpest criticism and his most bitter attacks, however, are reserved for the Socialists. The Socialists, according to his view, were the worst enemies of the working class, and the philosophy of socialism was a delusion and a snare. During his youth in this country, to which he had emigrated from England in 1863, he had much contact with socialist emigrants from Europe, those "restless spirits of all races and nationalities, . . . who had been in revolt and felt the iron hand of restricting authority," "soldiers" from the radical movements of Old World, "men of imagination, courage, and ideals," as he characterizes them, who sought the overthrow of capitalism by revolutionary methods. Yet from the first, and long before he had formulated his own philosophy and program, he felt that these men were pursuing the wrong course. He seemed instinctively to feel that their methods would not work in this country. Being willing, though, to learn all he could from them, he listened to them, joined in their debates, gained admittance to the inner council of the International Workingmen's Association after the removal of the headquarters of that organization from London to New York in 1873, but he was never of them. He believed that the International had been founded by Karl Marx on valid principles. It program emphasized the necessity for the organization of workers in trade unions and the development of economic power prior to efforts to establish labor government through political methods. Mr. Gompers was wholly in sympathy with this trade union point of view. But he saw the International captured by what he describes as "a brilliant group of faddists, reformers, and sensation-loving spirits" who were "not of the working people and treated their relationship to the labor movement as a means to a career." These "pseudo-Communists," he feels, "played with the labor movement,' and he saw their radical theories and actions furnish ammunition to the enemies of the movement to discredit it in the eyes of the public. "This experience," he states, "burned itself into my memory so that I never forgot the principle in later years. . . . I was coming to an appreciation of the difference between revolutionary ideals and revolutionary tactics for securing them." And thereafter he fought the Socialists without mercy. The guiding principle of his life, he tells us, became the belief that "trade unions pure and simple are the natural organizations of the wage workers to secure their present and practical im-

provement and to achieve their final emancipation." Socialism is subversive of trade unionism, therefore socialism stands condemned. Its philosophy is characterized by him as "socially injurious, economically unsound, and industrially impossible." And he never wearied in his attempts to drive the Socialists out of the American Federation of Labor and to destroy their independent organizations. Not class consciousness, but wage consciousness, not the overthrow but the reformation of capitalism, not revolutionary programs looking to ultimate ends, but an opportunistic program of immediate gains in the shape of higher wages, shorter hours, and better working conditions, not the Socialist commonwealth, but more "bread and butter" here and now—such was Gompers' theory and program.

And he conquered in large part. From 1881 to his death in December, 1924, Samuel Gompers was so much a part of the American labor movement that it is impossible to think of the movement without thinking of the man. He it was, more than any other individual, who gave to labor organizations in the United States their form, their theory, their program, their methods, and their tactics. He appreciated the peculiar conditions existing in this country that necessarily would differentiate the labor movement here from labor movements in foreign countries, and he set to work to construct a movement based on a philosophy which took account of these conditions. Against a background of European radicalism and English benevolent and fraternal trade unionism, transplanted in the United States at a time when the American labor movement was dominated by leaders with a middle-class philosophy looking for a solution of the laborer's problems to an escape from the wages system into self-employment in producers' coöperation. Samuel Gompers developed the philosophy of business unionism, with its acceptance of the capitalist system, its wage-conscious bias, its opportunistic policy, its "bread and butter" aims, and its emphasis upon economic organization and economic activity to secure the ends in view.

For years, through the editorial columns of the *American Federationist* and in various and sundry propaganda pamphlets and leaflets, Mr. Gompers set forth his ideas and ideals. These now are brought together in his autobiography and made easily accessible to all who care to become acquainted with them. His points of view, his philosophy, and his program are scattered throughout the pages of the two volumes, interspersed among accounts of his early life in East Side, New York, his activity in building the International Cigar Makers' Union; his part in the formation of the Federation of Organized Trades and Labor Unions of the United States and Canada, and of its successor, the American Federation of Labor; his political activity in furtherance of Henry George's campaign for Mayor of New York in 1886; his views on politics, compulsory arbi-

tration, socialism, violence in labor disputes, injunctions, and the Great War.

One hesitates to criticise adversely the subject-matter and arrangement of an autobiography. Probably the narrator of the events of his own life is privileged to select and describe whatever circumstances and events connected with it he pleases. But the fact remains that Mr. Gompers is tediously prolix and deals at exhausting length with what seem to be somewhat trivial details. The book would be much more readable were its contents reduced about one-half. There is a great deal of repetition, not only of subject-matter but even sometimes of the very wording of sentences and paragraphs. It is a rambling discourse, often without any particular plan or purpose. The chronological order is broken at will to make room for a chapter on "Opera and Drama," or one on "Woman's Work," or on "Things Personal," "Presidents I Have Known," "Foreign Friends," etc. The book, of course, was written for no particular group of readers. Doubtless, however, it will be read for the most part by the laborers themselves and by students and others interested in labor problems. Students of the American labor movement will find little of interest in the whole of Book III and Book V (the work being divided into five books). Book III is devoted, with the exception of chapter XXVI, "My Economic Philosophy," to discursive conversational talks on various personal interests of Mr. Gompers outside the labor movement. Book V gives an account of Mr. Gompers' activities during the World War and his interpretation of that conflict. He took great pride in the part he played during the war, and well might he do so. Yet his name will not be known to posterity for his participation in this struggle, and to devote 190 pages to its description is vastly to overemphasize its importance. Mr. Gompers' fame rests on his accomplishments as a leader of a great labor movement, and most readers of his book will find those parts descriptive of his work in the labor movement at once more interesting, more instructive, and more valuable. In them one is introduced to a labor philosophy and a labor leader unique in the history of the world to date.

EDWARD EVERETT HALE.

University of Texas.

THOMPSON, CARL D. *Public Ownership.* (New York: Thomas Y. Crowell Company, 1925. Pp. xviii, 445).

To unprejudiced readers, one interesting feature of practically every discussion of public importance is that both sides to the controversy can "prove," at least to their own satisfaction, the absolute correctness of their respective positions. The problem of public ownership of public utilities and related industries is no exception. Mr. Thomp-

son reads "with amazement" a report to the effect that "public ownership had failed wherever it had been properly steted," whereupon he takes up his cudgels in defense of public ownership and seeks to prove that, far from having failed, practically every public venture into business has been, or is about to be, an unquestioned success!

The author assures us in his introduction that it is not his purpose "to propound or to defend any theory with reference to public ownership. The purpose is rather, to present the facts with regard to the various phases of public ownership and enterprise." With that end in view he gives a survey of such enterprises, with special attention to the activities of the National, State, and local governments in the United States, though outstanding developments in other countries, particularly Canada, Great Britain, and Germany, are not neglected. The first chapter is devoted to the more familiar forms of public ownership, such as government itself, the postal service, roads, schools, and libraries. The next five chapters discuss those activities of the Federal government which have the nature of business enterprises and plead for the extension of such activity to include railroads, telegraphs, telephones, mines, and even banks. The various business enterprises of the State and local governments, such as waterworks, street railways, and gas and electric light plants, take up the succeeding six chapters. One whole chapter is devoted to the truly remarkable hydro-electric system of Ontario. This, quite appropriately, is followed by a discussion of the possibilities of public super-power systems. The concluding chapter tries, convicts, sentences, and executes, in quite summary fashion, all the commonly known arguments against public ownership.

Though the author begins with a laudable purpose, his zeal for the cause of public ownership gets the upper hand, with the result that, in spite of our being assured that his purpose is not to defend a theory, an unduly large part of the volume is consumed in pleading the more or less problematical and theoretical advantages of public ownership. For example, in the chapter on public ownership of railroads, some nine pages are devoted to the description and analysis of publicly owned systems as against about forty pages largely taken up with detailing the probable advantages of public ownership of railroads in the United States. In this same chapter the author gives a qualified approval to the Plumb Plan, which is probably one of the most viciously selfish proposals ever put forward by an organized group; for it would have made the public buy the roads and then turn them over to the employees except when deficits were to be made up. In this connection, with regard to former public subsidies to railroads, we are led to wonder whether they were any worse than the present method of furnishing tax-built roads for exploitation by bus lines.

In much of the volume the author is on firmer ground. He uses convincing facts and figures, though one is left with a vague suspicion that all factors are not properly considered, particularly the effects of taxation and assessments. It is manifestly easy for a public enterprise, with the power of assessing cost of extensions upon abutting property, to make a more favorable showing than a private enterprise without such power. Yet we freely admit that Mr. Thompson has made out a good case for public ownership in general. Under the circumstances he may be pardoned for his zeal to prove the success of nearly every public enterprise. He would have performed a better service, perhaps, had he given more attention to actual operations of publicly owned enterprises and less to mere argument. Yet his contribution to the discussion of this perennial problem is worthwhile and welcome, and we close the book with a feeling that we share, to a large extent, his faith in the future of public ownership.

CHARLES A. TIMM.

University of Texas.

WILDE, NORMAN. *The Ethical Basis of the State.* (Princeton: Princeton University Press, 1924. Pp. 236).

Professor Wilde in his *Ethical Basis of the State* is not seeking to be original; he simply feels that, in the face of the present-day economic organization, which seems to be tending to swallow up or push aside the political state, and in the face of certain modern political theories such as socialism and pluralism, which emphasize the economic aspect of life, there is need of reëxamining the nature and social purpose of the state, before we allow ourselves to be converted to its abolition. As a background for this reëxamination, we must have an understanding of the history of the state, as well as of the classic and recent political theories, which in the opening chapters the author attempts to provide.

In later chapters he proceeds with his task, that of discovering an ethical basis for the state. Much of the present-day confusion, he believes, is the result of differing opinions as to the nature of the social will. Does the state represent a really unified social will, or does it simply embody a mere external semblance of unity, which imposes itself on the public by force, fraud, or the power of habit? His viewpoint is that neither of these positions is correct. While granting that the expression of public opinion and the operation of our present forms of representative government are very faulty, he is not prepared to go so far as to say that there is no such thing as a social will. It is, he maintains, neither a metaphysical *Volksgeist*, nor is it that mere mechanical mixture of individual wills, recognized by biologists and psychologists. The volitional process may be individual, but it must take place within a social medium and not in a

vacuum. But a true social will is not yet a reality; it is rather an ideal to be worked out through the individual's own efforts for development and discipline. This then is the basic reason for dissatisfaction with the state. The state as an expression of the social will is an ideal not yet reached. It has not arrived; it is in the process of arriving.

Modern theories of the state must, therefore, be examined in the light of this conception. These theories he enumerates as six: (1) absolutism, which identifies the state and society; (2) anarchism, which condemns the state as plunder by a dominant class; (3) state socialism, which would abolish all class and eventually do away with the state as an instrument of class domination; (4) guild socialism, which would strip the state of its economic powers and reduce it to the level of other associations; (5) individualism, which regards the state as a mere preserver of law and order; and (6) idealism, which recognizes personality, but believes its development impossible except through state-guarded social activity. These theories Wilde reduces to two: that held by those who see in the state a permanent instrument of human welfare, and the second by those who find it a temporary, though obstinate, obstruction to the highest social development. The latter theory he considers inadequate either in justifying or explaining away the state, because it deals with only an aspect of the state, with highly problematical predictions as to its future, or overemphasizes the economic phase of social life. The guild socialists in particular underestimate the communal character of the state simply because, with the present imperfect community spirit, the state is relatively external to the individual.

The ideal of society, so Wilde thinks, is harmony—wholeness, and here he attacks the pluralists, since they deny the superiority of the political function only because the state has not yet realized the political ideal. The state is not simply one institution among many, but is rather the condition of all. Society is thus not a simple plurality of coördinate groups, but an organized system of institutions of differing value both as to efficiency and function. The problem is to find the just state, and justice is not to be secured by setting up one group against another group, because "a man is not a bundle of unrelated interests existing side by side in a neutral medium. His purposes are not enclosed in water-tight compartments . . . His real interest, in short, is not in these many particular activities in isolation, but in such a balance and organization of them as shall express his unique individual disposition or character." Functionalism capitalizes the antagonisms of groups at the expense of their harmonies.

Wilde's solution, therefore, is to leave political authority in the hands of the representatives of the geographically determined groups, while associating with them for purposes of information and deliberation the delegates of the functional bodies. True harmony can only

come, however, through building up a true public opinion and social will from the bottom, which can be done by counterbalancing the centrifugal forces of recognized groups by the centripetal tendencies latent in the neighborhood groups which Miss Follett upholds. The final loyalty, therefore, is not to an economic group nor to an International, but to the ideal of the perfect community where coöperation reigns supreme. Here will be found the perfect common will for which the philosopher has been searching, and thus is formed the ethical basis of the ideal state, toward which we are moving.

O. DOUGLAS WEEKS.

University of Texas.

BOOK NOTE

The vast amount of published material now extant on the subject of international relations and its various fields creates a definite need of workable outlines and bibliographies. Professor Parker Thomas Moon made a valuable contribution to supply that need when he prepared his *Syllabus on International Relations* (issued by The Institute of International Education; published by Macmillan, 1925). In this volume of 276 pages we find a carefully wrought outline of the various phases of international relations, such as "Imperialism and World Politics," "Militarism and Armaments," "History of International Relations," summaries of policies of the Powers, economic problems, and the problem of diplomacy and of international organization. In all there are ten parts, each part being divided into proper subdivisions and each part and subdivision being supplied with a list of references. A general bibliography is given in the last thirty-five pages of the syllabus. The syllabus is designed to serve the needs of classes and clubs and can be used either in part or as a whole, to be the basis of courses of varying length and scope.